

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



**Belfast  
City Council**

15th August, 2022

## **MEETING OF THE LICENSING COMMITTEE**

Dear Alderman/Councillor,

The above-named Committee will be a Hybrid Meeting – Council Chamber on Wednesday, 17th August, 2022 at 5.00 pm, for the transaction of the business noted below.

You are requested to attend.

Yours faithfully,

John Walsh

Chief Executive

## **AGENDA:**

### **1. Routine Matters**

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

### **2. Delegated Matters**

- (a) Licences Issued Under Delegated Authority (Pages 1 - 8)
- (b) The Marcus Ward Outdoor Entertainment Licence Provisional Grant (Pages 9 - 18)
- (c) Boucher Road Playing Fields outdoor Entertainment Licence Grant (Pages 19 - 26)
- (d) 163 Stranmillis Road - Amusement Permit Provisional Grant (Pages 27 - 82)
- (e) 73-75 North Street - Amusement Permit Provisional Grant (Pages 83 - 278)

- (f) Houses in Multiple Occupation (HMO) Licenses Issued Under Delegated Authority (Pages 279 - 282)
- (g) Application for a New Licence to operate a House of Multiple Occupation for 34 Sandhurst Gardens, Belfast, BT9 5AW (Pages 283 - 306)
- (h) Application for a New Licence to operate a House of Multiple Occupation for 38 Wolseley Street, Belfast, BT7 1LG (Pages 307 - 342)
- (i) Application for a New Licence to operate a House of Multiple Occupation for 118 University Avenue, Belfast, BT7 1GZ (Pages 343 - 386)



<b>Subject:</b>	<b>Licences Issued Under Delegated Authority</b>
<b>Date:</b>	17 August 2022
<b>Reporting Officer:</b>	Stephen Hewitt, Building Control Manager, Ext. 2435
<b>Contact Officer:</b>	James Cunningham, Senior Licensing Officer, Ext. 3375

<b>Restricted Reports</b>	
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"/>

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

<b>1.0</b>	<b>Purpose of Report or Summary of main Issues</b>
1.1	Under the Scheme of Delegation, the Director of Planning and Building Control is responsible for exercising all powers in relation to the issue, but not refusal, of Permits and Licences, excluding provisions relating to the issue of Licences where adverse representations have been made.
<b>2.0</b>	<b>Recommendations</b>
2.1	The Committee is requested to note the applications that have been issued under the Scheme of Delegation.

3.0Main report

Key Issues

3.1Under the terms of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985 the following Entertainments Licences were issued since your last meeting.

Premises and Location	Type of Application	Applicant
Ardoyne Working Mens Club, 9b Kerrera Street, Belfast, BT14	Renewal	Mr Brendan Mailey
Ballynafeigh Apprentice Boys Flute Band, 1-5 Walmer Street, Belfast, BT7	Renewal	Mr Stephen Biggerstaff
Ballynafeigh Orange Hall, 413 Ormeau Road, Belfast, BT7	Renewal	Mr Cecil Hall
Beehive Bar, 193-195 Falls Road, Belfast, BT12 6FB.	Renewal	Mr Philip Bannon, Downview Inns Ltd
Belfast Castle, 698 Antrim Road, Belfast, BT15	Renewal	Ms Cathryn McOscar, Belfast City Council
Belmont Bowling Club, 6A Kincora Avenue, Belfast, BT4	Renewal	Mr Stephen Walker
Benedicts Hotel, 17-21 Bradbury Place, Belfast, BT7	Renewal	Mr Edmund Simpson, Elmoreton Ltd
C.S Lewis Square, Holywood Arches, Newtownards Road, Belfast, BT4 1HE.	Renewal (outdoor)	Mr Ryan Black, Belfast City Council
Campbell College, Belmont Road, Belfast, BT4 2ND.	Renewal	Mr Wayne Harper
Casement Social Club, Casement Park, 88-100 Andersonstown Road,BT11	Renewal	Ms Maria Toner
Castlereagh Glentoran Supporters Club, 8a Grand Parade, Belfast, BT5	Renewal	Mr Gary Campbell
Castlereagh Presbyterian Church Hall, 79 Church Road, Castlereagh, Belfast, BT6 9SA.	Renewal	Mr Trevor Busby
Cathedral Park (Buoys Park), Academy Street, Belfast, BT1 .	Renewal (outdoor)	Mr Ryan Black, Belfast City Council
Crescent Arts Centre, 2-4 University Road, Belfast, BT7	Renewal	Ms Sophie Hayles
Cresta Golf and Social Club, 156-158 Castlereagh Road, Belfast, BT5 5FT.	Renewal	Mr Mervyn H. Hamilton
Dan's Bar, 221-223 Springfield Road, Belfast, BT12 7DD.	Renewal	Ms Sinead Keenan, MMK (Belfast) Ltd



<b>Premises and Location</b>	<b>Type of Application</b>	<b>Applicant</b>
Deanes Deli, 42-44 Bedford Street, Belfast, BT2 7FF.	Renewal	Mrs Rachel McCreight, Deanes Restaurant Group
Empire Social Club, 337A Donegall Road, Belfast, BT12 6FL.	Renewal	Mr William Newman
Ewarts Bowling Club, Somerdale Park, Belfast, BT14	Renewal	Mr Edward Smyth
Granny Annie's Kitchen, 81-85 Chichester Street, Belfast, BT1 4JE.	Renewal	Mr Michael Johnston, W & R Holdings Ltd
Irish National Foresters, 14-18 Albert Street, Belfast, BT12	Renewal	Mr Gerry Lappin
Kremlin Bar, 96 Donegall Street, Belfast, BT1 2GW.	Renewal	Ms Anthea Wilson, Anthology N.I. Ltd
Laurel Leaf Bar, Unit 14 Twin Spires Centre, 155 Northumberland Street, Belfast, BT13 2JF.	Renewal	Mr Brendan Mc Kee, Sky Blue Pubs NI Ltd
Ligoniel & District Homing Pigeon Club, 46a Glenbank Place, Belfast, BT14	Renewal	Mr Stephen Forsythe
Lyric Theatre NI, 55 Ridgeway Street, Belfast, BT9	Renewal	Mr Jimmy Fay
Maddens Bar, 74 Berry Street, Belfast, BT1 1JE.	Renewal	Mr Brian McMullan
National Club, 17-19 Queen Street, Belfast, BT1 6EA.	Renewal	Mr Jim Mulholland
Ormeau Park, Ormeau Embankment, Belfast.	Renewal (outdoor)	Mr Ryan Black, Belfast City Council
Raven Social Club, 11-15 Castlereagh Street, Belfast, BT5 4NE.	Renewal	Mr Stephen Beattie
Royal Naval Association, 79-81 Great Victoria Street, Belfast, BT2 7AF.	Renewal	Mr Robert White
Ryans, 116-118 Lisburn Road, Belfast, BT9 6AH.	Renewal	Mr Gavin Bates, Barel Ltd
Shoe Factory, 12-14 Union Street, Belfast, BT1 2JF.	Renewal	Ms Anthea Wilson, Anthology N.I. Ltd
Shu Restaurant, 253-255 Lisburn Road, Belfast, BT9 7EN.	Renewal	Mr Alan Reid, Fine-Foods Ltd
St Colmcilles Parochial Hall, 191 Upper Newtownards Road, Belfast, BT4 3JB.	Renewal	Rev Anthony Fitzsimons
St Johns Church Halls, 141 Malone Road, Belfast, BT9	Renewal	Ms Catherine Turner

	<table><tr><th>Premises and Location</th><th>Type of Application</th><th>Applicant</th></tr><tr><td>St Molua's Parish Church Hall, 639 Upper Newtownards Road, Belfast, BT4 3LR.</td><td>Renewal</td><td>Ms Frances Hastie</td></tr><tr><td>St Pauls GAC, 98c Shaws Road, Belfast, BT11 9QR.</td><td>Renewal</td><td>Mr Mark Carey</td></tr><tr><td>The Cuckoo, 149 Lisburn Road, Belfast, BT9 7AJ.</td><td>Renewal</td><td>Mr Jim Crawford - Smyth, Silverpine Inns Ltd</td></tr><tr><td>The Dirty Onion &amp; Yard Bird, 42 Waring Street, Belfast, BT1</td><td>Renewal &amp; Variation</td><td>Mr James Sinton, Cathedral Leisure Ltd</td></tr><tr><td>The Great Eastern Bar, 273 Newtownards Road, Belfast, BT4 1AF.</td><td>Renewal</td><td>Mr Stephen Townsley</td></tr><tr><td>The Monico Bars, 17 Lombard Street, Belfast, BT1</td><td>Renewal</td><td>Ms Nicole McGrath, Fisherwick Inns Ltd</td></tr><tr><td>The Mount Inn, 156 North Queen Street, Belfast, BT15 1HQ.</td><td>Renewal</td><td>Mr Desmond Quinn</td></tr><tr><td>The SSE Arena Belfast Carparks, Queens Quay &amp; Arc Public Realm areas, 2 Queens Quay, Belfast, BT3 9QQ.</td><td>Renewal (outdoor)</td><td>Mr Robert Fitzpatrick, The Odyssey Trust Company Ltd</td></tr><tr><td>The Thirsty Goat Bar &amp; 21 Social, 1 Hill Street, Belfast, BT1 2LA.</td><td>Renewal</td><td>Mr Henry Downey, Eagle-Glen Ltd</td></tr><tr><td>Turf Lodge Tenants Association, 35A Norglen Gardens, Belfast, BT11 8EL.</td><td>Renewal</td><td>Ms Jean Russell</td></tr><tr><td>Voodoo, 9-11 Fountain Street, Belfast, BT1 5ED.</td><td>Renewal</td><td>Mr Ciaran Smyth, Phoenix Wine and Spirit Stores Ltd</td></tr></table>	Premises and Location	Type of Application	Applicant	St Molua's Parish Church Hall, 639 Upper Newtownards Road, Belfast, BT4 3LR.	Renewal	Ms Frances Hastie	St Pauls GAC, 98c Shaws Road, Belfast, BT11 9QR.	Renewal	Mr Mark Carey	The Cuckoo, 149 Lisburn Road, Belfast, BT9 7AJ.	Renewal	Mr Jim Crawford - Smyth, Silverpine Inns Ltd	The Dirty Onion & Yard Bird, 42 Waring Street, Belfast, BT1	Renewal & Variation	Mr James Sinton, Cathedral Leisure Ltd	The Great Eastern Bar, 273 Newtownards Road, Belfast, BT4 1AF.	Renewal	Mr Stephen Townsley	The Monico Bars, 17 Lombard Street, Belfast, BT1	Renewal	Ms Nicole McGrath, Fisherwick Inns Ltd	The Mount Inn, 156 North Queen Street, Belfast, BT15 1HQ.	Renewal	Mr Desmond Quinn	The SSE Arena Belfast Carparks, Queens Quay & Arc Public Realm areas, 2 Queens Quay, Belfast, BT3 9QQ.	Renewal (outdoor)	Mr Robert Fitzpatrick, The Odyssey Trust Company Ltd	The Thirsty Goat Bar & 21 Social, 1 Hill Street, Belfast, BT1 2LA.	Renewal	Mr Henry Downey, Eagle-Glen Ltd	Turf Lodge Tenants Association, 35A Norglen Gardens, Belfast, BT11 8EL.	Renewal	Ms Jean Russell	Voodoo, 9-11 Fountain Street, Belfast, BT1 5ED.	Renewal	Mr Ciaran Smyth, Phoenix Wine and Spirit Stores Ltd
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3.2	Under the terms of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 the following Amusement Permits were issued since your last meeting.																																				
	<table><tr><th>Premises and Location</th><th>Type of Application</th><th>Applicant</th></tr><tr><td>Players, Unit 5-6, 133-137 Lisburn Road, Belfast, BT9 7AG.</td><td>Renewal</td><td>Mr Liam Boyle, Play LR Ltd</td></tr><tr><td>Players, 22 Shaftesbury Square, Belfast, BT2 7BD.</td><td>Renewal</td><td>Mr Liam Boyle, Play SS Ltd</td></tr><tr><td>Funtime, 157a Antrim Road, Belfast, BT15 2GW.</td><td>Renewal</td><td>Mr Patrick Quinn, P &amp; F Group Ltd</td></tr></table>		Premises and Location	Type of Application	Applicant	Players, Unit 5-6, 133-137 Lisburn Road, Belfast, BT9 7AG.	Renewal	Mr Liam Boyle, Play LR Ltd	Players, 22 Shaftesbury Square, Belfast, BT2 7BD.	Renewal	Mr Liam Boyle, Play SS Ltd	Funtime, 157a Antrim Road, Belfast, BT15 2GW.	Renewal	Mr Patrick Quinn, P & F Group Ltd																							
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3.3	Under the terms of the Cinemas (Northern Ireland) Order 1991 no Cinema Licences were issued since your last meeting.																																				
3.4	Under the terms of the Petroleum Consolidation Act 1929 the following Petroleum Licences were issued since your last meeting.																																				

<b>Premises and Location</b>	<b>Type of Application</b>	<b>Applicant</b>
Ballymore FS, 2-10 Andersonstown Road, Belfast, BT11 8FH.	Renewal	Mr Alan Pollock, Maxol Oil Ltd
Belvoir Filling Station, 60 Milltown Road, Belfast, BT8	Renewal	Mr Alan Armstrong, Henderson Retail Ltd
Cherryvalley Filling Station, 46 Gilnahirk Road, Belfast, BT5	Renewal	Mr Mervyn Bell, Henderson Retail Ltd
Creightons of Balmoral, 2-4 Upper Lisburn Road, Belfast, BT10 0AA.	Renewal	Mr Andrew Porter
Creightons of Blacks Road, 243-267 Upper Lisburn Road, Belfast, BT10 0LN.	Renewal	Mr Andrew Porter
Creightons Of Finaghy, 87-89 Upper Lisburn Road, Belfast, BT10	Renewal	Mr Andrew Porter
Eurospar Filling Station, 250 Donegall Road, Belfast, BT12	Renewal	Mr Alan Armstrong, Henderson Retail Ltd
Farrans Construction, 99 Kingsway, Belfast, BT17 9NU.	Renewal	Mr Donald Creighton
Gilnahirk Filling Station, 109A Gilnahirk Road, Belfast, BT5	Renewal	Mr John O' Hare, Property Management Services Ltd
Lanark Way Filling Station, 18 Lanark Way, Belfast, BT13	Renewal	Mr Karl Hunter, Rathen Ltd
More Mount Merrion, 54 Rosetta Road, Belfast, BT6	Renewal	Mr Feargal Woods, Woods Stores NI Ltd
New Barnsley Police Station, 613 Springmartin Road, Belfast, BT12 7FN.	Renewal	Ms Angela Mc Allister, PSNI Transport Services
Spar/BP Filling Station, 276 Upper Newtownards Road, Belfast, BT4 3EU.	Renewal	Mr Alan Armstrong, Henderson Retail Ltd
Spar/BP Filling Station, 318 Ravenhill Road, Belfast, BT6	Renewal	Mr Alan Armstrong, Henderson Retail Ltd
Stewartstown Road Service Station, 232 Stewartstown Road, Belfast, BT17 0LB.	Renewal	Mr Declan Hoey, Beechvale NI Ltd

- 3.5 Under the terms of the Street Trading Act (Northern Ireland) 2001 the following Street Trading Licences were issued since your last meeting.

<b>Location</b>	<b>Type of Application</b>	<b>Commodity</b>	<b>Hours Licensed</b>	<b>Applicant</b>
14 Dublin Road outside Movie House Site, BT2 7HN.	Temporary	Toys, Novelty Items, Souvenirs	12/7/22 7am - 6pm	Ms Muriel Gilliland

<b>Location</b>	<b>Type of Application</b>	<b>Commodity</b>	<b>Hours Licensed</b>	<b>Applicant</b>
237 Lisburn Road outside Eakin Gallery, Belfast, BT9 7EN.	Temporary	Jokes, Novelty Items, Souvenirs, Toys	12/7/22 8am - 6pm	Mr Raymond Winston Coulter
793 Lisburn Road outside Warnocks, Belfast, BT9 7GX.	Temporary	Jokes, Novelty Items, Souvenirs, Toys	12/7/22 8am - 7pm	Mr Robert Crooks
Balmoral Avenue near junction with Lisburn Rd, Belfast, BT9.	Temporary	Jokes, Novelty Items, Souvenirs, Toys	12/7/22 8am - 7pm	Mr Robert Crooks
Balmoral Avenue near junction with Malone Park Lane, Belfast, BT9 6NQ.	Temporary	Hot & cold beverages, confectionary, ice cream	12/7/22 8am - 6pm	Mr Christopher Wayne Adair
Balmoral Avenue near junction with Malone Road, Belfast, BT9.	Temporary	Cold beverages, confectionary, ice cream	12/7/22 9am - 9pm	Mr John Gibson
Dublin Road, Shaftsbury Sq, Bradbury Pl, Lisburn Rd, Balmoral, Belfast, BT9 .	Temporary (Mobile)	Toys, Novelty Items, Souvenirs	12/7/22 8am - 7pm	Mr Robert Crooks
Dublin Road, Shaftsbury Sq, Bradbury Pl, Lisburn Rd, Balmoral, Belfast, BT9.	Temporary (Mobile)	Jokes, Novelty Items, Souvenirs, Toys	12/7/22 8am - 5pm	Mr Nathan Johnston
Dublin Road at junction with Fulton Street, Belfast, BT2 7HP.	Temporary	Jokes, Souvenirs, Toys	12/7/22 7am - 7pm	Ms Hollie Kerr
Dublin Road at junction with Fulton Street, Belfast, BT2.	Temporary	Cold beverages, confectionary, ice cream	12/7/22 8am - 7pm	Mr George Pirie
Dublin Road at junction with Fulton Street, Belfast, BT2.	Temporary	Hot & Cold Food and beverages	12/7/22 7am - 7pm	Ms Kathleen Finn
Dublin Road at junction with Salisbury Street, near Oxfam shop, BT2 7HN.	Temporary	Hot & Cold Food and beverages	12/7/22 7am - 7pm	Mr Hakan Sen
Dublin Road opposite public toilets near Movie House, Belfast, BT2 7HN	Temporary	Hot & cold beverages, confectionary, hot food	12/7/22 8am - 7pm	Mr Stephen Baxter
Dublin Road opposite public toilets near Movie House, Belfast, BT2 7HN.	Temporary	Cold beverages, confectionary, ice cream	12/7/22 8am - 7pm	Mr Stephen Baxter

<b>Location</b>	<b>Type of Application</b>	<b>Commodity</b>	<b>Hours Licensed</b>	<b>Applicant</b>
Dublin Road opposite public toilets near Movie House, Belfast, BT2.	Temporary	Cold beverages, confectionary, ice cream	12/7/22 8am - 7pm	Mr Stephen Baxter
Lisburn Road at junction with Bradbury Place/ Sandy Row out, Belfast, BT9.	Temporary	Hot & Cold Food and beverages	12/7/22 8am - 7.30pm	Ms Marion Elizabeth Dougan
Lisburn Road at junction with Jubilee Road, Belfast, BT9 7AB.	Temporary	Cold beverages, confectionary, ice cream	12/7/22 9am - 9pm	Mr John Gibson
Lisburn Road near bridge over Stockman's Lane, Belfast, BT9.	Temporary	Cold beverages, confectionary, ice cream	12/7/22 9am - 9pm	Mr John Gibson
Lisburn Road near junction with Derryvolgie Avenue, Belfast, BT9.	Temporary	Jokes, Novelty Items, Souvenirs, Toys	12/7/22 8am - 6pm	Mr Nathan Johnston
Lisburn Road near junction with Lower Windsor Avenue, Belfast, BT9 7EN.	Temporary	Hot & Cold Food and beverages	12/7/22 8am - 7.30pm	Ms Lorene Johnston
Lisburn Road, outside Bradbury Clinic, Belfast, BT9 7AA.	Temporary	Toys, Novelty Items, Souvenirs	12/7/22 7am - 6pm	Ms Muriel Gilliland
Royal Avenue at junction with North Street, Belfast, BT1 1FE.	Temporary	Cold beverages, confectionary, ice cream	12/7/22 8am - 7pm	Mr Stephen Baxter
Shaftesbury Square at Halifax building, Belfast, BT2 7DG.	Temporary	Hot & Cold Food and beverages	12/7/22 8am - 7pm	Mr George Pirie
Shaw's Bridge roundabout on grass verge in front of House of Sport, Belfast, BT9 5LA.	Temporary	Hot & cold beverages, confectionary	12/7/22 8am - 7pm	Mr Stephen Baxter
Shaw's Bridge roundabout on grass verge, at House of Sports, Upper Malone Road, BT9 5LA.	Temporary	Hot & Cold Food and beverages	12/7/22 7am - 7pm	Mr David Deacon
Shaw's Bridge roundabout, grass verge in front of House of Sport, Upper Malone Road, Belfast, BT9 5LA.	Temporary	Jokes, Souvenirs, Toys	12/7/22 7am - 7pm	Mr James Hugh Bell
Shaw's Bridge at House of Sport, BT9 5LA.	Temporary	Hot & Cold Food and beverages	12/7/22 9am - 7pm	Ms Elaine Morrison

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3.6	Under the terms of the Road Traffic Regulation (Northern Ireland) Order 1997 the following Road Closure Orders were made since your last meeting.																																											
	<table><tr><th>Location</th><th>Type of Activity</th><th>Date and Hours permitted</th><th>Applicant</th></tr><tr><td>Little Donegall Street, Library Street, Union Street, Stephen Street, Kent Street, Unity Walk</td><td>Filming</td><td>15, 16, 17 June 2022 06:00 - 23:00</td><td>Mr David Cooke</td></tr><tr><td>Ballygomartin Road, Ballygomartin Drive</td><td>Filming</td><td>14, 15, 16, 27 June 2022 09:30 - 21:30</td><td>Mr David Cooke</td></tr><tr><td>Beverly Street, Carlow Street, Cumberland Street, Percy Street, Percy Place, Dover Street, Loudon Street, Boundary Street, Cargill Street, Dayton Street, Townsend Street, Carrigart Avenue, Creeslough Park, Derryveagh Drive, Horn Drive, Doon Road, Lenadoon Avenue, Glenveagh Drive</td><td>Filming</td><td>20 to 24 June 2022 08:00 - 20:30 21, 24 June 2022 08:00 - 20:30</td><td>Mr David Cooke</td></tr><tr><td>Mountcollyer Street, Glencollyer Street, Mileriver Street, Limestone Road</td><td>Filming</td><td>13, 14, 15, 25 June 2022 07:30 - 20:00</td><td>Mr David Cooke</td></tr><tr><td>Gipsy Street</td><td>Filming</td><td>22 July 2022 07:00 - 21:00</td><td>Mr Johnny Scott</td></tr><tr><td>Norwood/Circular Road</td><td>Street Party</td><td>23 July 2022 14:00 - 18:00</td><td>Ms Clare Martin</td></tr><tr><td>West Belfast</td><td>Féile 8K</td><td>07 Aug 2022 08:30 - 11:30</td><td>Mr Gerry McClory</td></tr><tr><td>Deramore Avenue</td><td>Street Party</td><td>14 August 2022 08:00 - 18:00</td><td>Mr Gerry Tubritt</td></tr><tr><td>Geneva Gardens</td><td>Street Party</td><td>21 August 2022 14:00 - 19:00</td><td>Ms Bernadette Bridges &amp; Ms Pat Conlon</td></tr></table>				Location	Type of Activity	Date and Hours permitted	Applicant	Little Donegall Street, Library Street, Union Street, Stephen Street, Kent Street, Unity Walk	Filming	15, 16, 17 June 2022 06:00 - 23:00	Mr David Cooke	Ballygomartin Road, Ballygomartin Drive	Filming	14, 15, 16, 27 June 2022 09:30 - 21:30	Mr David Cooke	Beverly Street, Carlow Street, Cumberland Street, Percy Street, Percy Place, Dover Street, Loudon Street, Boundary Street, Cargill Street, Dayton Street, Townsend Street, Carrigart Avenue, Creeslough Park, Derryveagh Drive, Horn Drive, Doon Road, Lenadoon Avenue, Glenveagh Drive	Filming	20 to 24 June 2022 08:00 - 20:30 21, 24 June 2022 08:00 - 20:30	Mr David Cooke	Mountcollyer Street, Glencollyer Street, Mileriver Street, Limestone Road	Filming	13, 14, 15, 25 June 2022 07:30 - 20:00	Mr David Cooke	Gipsy Street	Filming	22 July 2022 07:00 - 21:00	Mr Johnny Scott	Norwood/Circular Road	Street Party	23 July 2022 14:00 - 18:00	Ms Clare Martin	West Belfast	Féile 8K	07 Aug 2022 08:30 - 11:30	Mr Gerry McClory	Deramore Avenue	Street Party	14 August 2022 08:00 - 18:00	Mr Gerry Tubritt	Geneva Gardens	Street Party	21 August 2022 14:00 - 19:00	Ms Bernadette Bridges & Ms Pat Conlon
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3.7	Under the terms of the Licensing of Pavement Cafés Act (Northern Ireland) 2014 no Pavement Café Licences were issued since your last meeting.																																											
	<b><u>Financial &amp; Resource Implications</u></b>																																											
3.8	None																																											
	<b><u>Equality or Good Relations Implications/Rural Needs Assessment</u></b>																																											
3.9	There are no issues associated with this report.																																											



**Belfast**  
City Council

## LICENSING COMMITTEE

<b>Subject:</b>	<b>Application for the Provisional Grant of an Outdoor Entertainments Licence for The Marcus Ward, Bankmore Square.</b>
<b>Date:</b>	17 August 2022
<b>Reporting Officer:</b>	Stephen Hewitt, Building Control Manager, Ext. 2435
<b>Contact Officer:</b>	Quintin Thompson, Senior Building Control Surveyor, Ext 2570

<b>Restricted Reports</b>	
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"/>

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

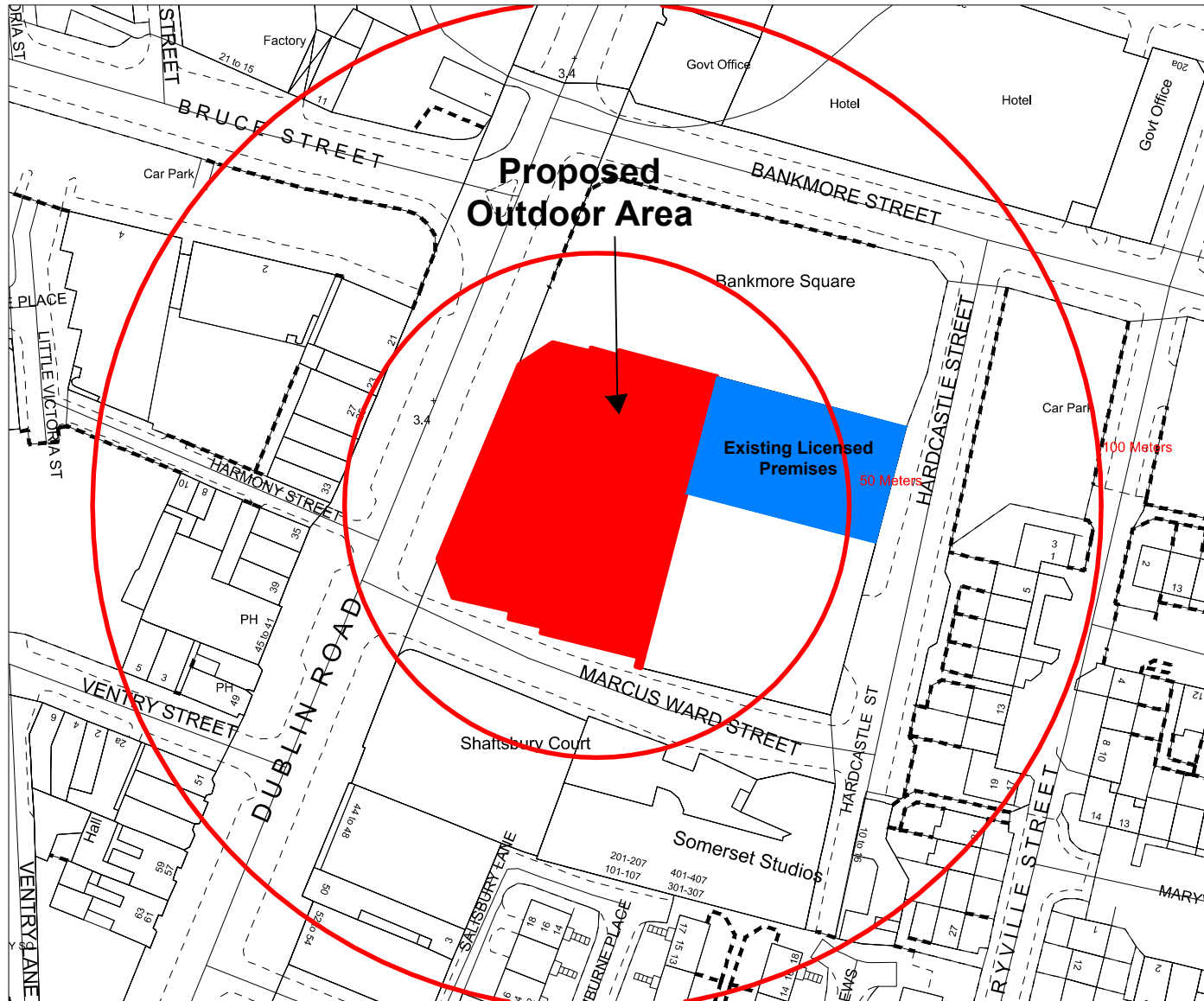
1.0	Purpose of Report or Summary of main Issues		
1.1	To consider an application for the provisional grant of a 7-Day Annual Outdoor Entertainments Licence to provide outdoor musical entertainment.		
	<b>Area and Location</b> The Marcus Ward 1 Bankmore Square Belfast BT7 9DH	<b>Ref. No.</b> WK/2020/00281	<b>Applicant</b> Mr Lawrence Bannon Tobar Inns Limited 1 Bankmore Square Belfast, BT7 9DH

1.2	A location map is attached as Appendix 1.
<b>2.0</b>	<b>Recommendations</b>
2.1	<p>Taking into account the information presented and any representations received Members are required to consider the application and to:</p> <ul style="list-style-type: none"> <li>a) Approve the application for the provisional grant of the 7-Day Annual Outdoor Entertainments Licence, or</li> <li>b) Approve the application for the provisional grant with special conditions, or</li> <li>c) Refuse the application for the provisional grant of the 7-Day Annual Outdoor Entertainments Licence.</li> </ul>
2.2	If an application is refused, or special conditions are attached to the licence to which the applicant does not consent, then the applicant may appeal the Council's decision within 21 days of notification of that decision to the County Court. In the case that the applicant subsequently decides to appeal, entertainment may not be provided until any such appeal is determined.
<b>3.0</b>	<b>Main report</b>
	<p><b><u>Key Issues</u></b></p> <p><b><u>Provisional grant of a licence</u></b></p> <p>3.1 There is provision within the Local Government (Miscellaneous Provisions) (NI) Order 1985 (the Order) to make application for the grant of an entertainments licence in respect of premises which are to be, or are in the course of being, constructed, extended or altered.</p> <p>3.2 If the Council is satisfied that the premises would, if completed in accordance with plans deposited, be such that it would grant the licence, the Council may grant the licence subject to a condition that it shall be of no effect until confirmed by the Council.</p> <p>3.3 This is described as the provisional grant of a licence.</p> <p>3.4 Should the Council grant a provisional licence the Order states that, when it is satisfied that the premises have been completed in accordance with the plans deposited, the Council shall then issue the licence.</p> <p>3.5 Should Members be of mind to grant the licence provisionally, Committee is requested to consider delegating authority to the Director of Planning and Building Control in consultation with the City Solicitor to issue the licence once all necessary technical requirements relating to health, safety, welfare and amenity have been completed to the satisfaction of the Building Control Service.</p> <p><b><u>Details of the Premises and Proposals</u></b></p> <p>3.6 The premises will be a newly formed outdoor events space located on the current hardstanding area on the corner of Bankmore Square and Dublin Road where the Movie House Cinema was demolished. The perimeter to the event space is to be formed with shipping containers. The maximum numbers within the event space will be agreed by the Building Service and may vary depending on individual concert set-up proposals.</p> <p>3.7 The days and hours during which entertainment is proposed to be provided are:</p>



	<ul style="list-style-type: none"> <li>Monday to Saturday: 11.30am to 11.00pm and</li> <li>Sunday: 12.30pm to 11.00pm</li> </ul>
3.8	The applicant proposes to provide an area for the consumption of food and alcohol which will include the provision of live music.
3.9	Layout plans of the premises are attached as Appendix 2.
	<b><u>Representations</u></b>
3.10	Public notice of the application has been placed and one objection was received from a local resident on 9 May 2022. Further to the objection both parties attended a liaison meeting organised by the Service on 24 June 2022. The Licensee advised that the main use of the space was for the consumption of food and drink with entertainment being provided on Thursday to Sunday and that a sound barrier was being constructed along the perimeter of the premises adjacent to Marcus Ward Street. Following these discussions, the objector agreed to withdraw the objection.
	<b><u>PSNI</u></b>
3.11	The Police Service of Northern Ireland have been consulted in relation to the application and has confirmed that they have no objection to the application. A copy of their correspondence is attached at Appendix 3.
	<b><u>NIFRS</u></b>
3.12	The Northern Ireland Fire and Rescue Service have been consulted in relation to the application and have confirmed that they have no objection to the application.
	<b><u>Health, safety and welfare</u></b>
3.13	Members should note that, if you are minded to provisionally grant the application, it will not be declared final until all works are complete to ensure compliance, amongst other matters, with all fire safety, structural and access requirements.
3.14	All certification pre-requisite to the grant of a licence will also be required before the licence can be confirmed.
	<b><u>Noise</u></b>
3.15	The applicant has been asked to submit an acoustic report for the outdoor area which will then be provided to the Environmental Protection Unit (EPU) for evaluation. As with other technical requirements associated with the provisional application any appropriate acoustic measures will also require to be implemented before the grant of the licence can be confirmed.
3.16	Members are reminded that the Clean Neighbourhood and Environment Act (Northern Ireland) 2011 gives the Council additional powers in relation to the control of entertainment noise after 11.00 pm.
	<b><u>Applicant</u></b>
3.17	The applicant, and/or their representatives, will be available at your meeting to answer any queries you may have in relation to the application.

3.18	<p><b><u>Financial &amp; Resource Implications</u></b></p> <p>None.</p> <p><b><u>Equality or Good Relations Implications/Rural Needs Assessment</u></b></p>
3.19	<p>There are no issues associated with this report.</p>
<b>4.0</b>	<p><b>Appendices – Documents Attached</b></p>
	<ul style="list-style-type: none"> <li>• Appendix 1 – Location map</li> <li>• Appendix 2 – Layout Plans</li> <li>• Appendix 3 – PSNI Response</li> </ul>



DRAWN BY M Treacy  
DATE 09/08/2022

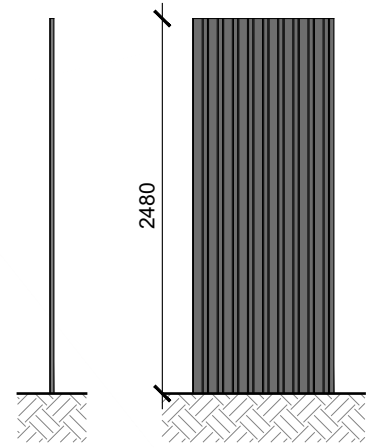
The Marcus Ward (Outdoor)  
1 Bankmore Square

SCALE 1:1250 @ A4

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Retail Unit  
Food Unit  
Hatch Unit  
  
Storage / C

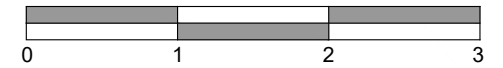
- Toilet Unit
- Storage Unit
- Bulk Storage
- Bike Rack



2.48m High Powder  
coated corrugated  
steel Fence

## Boundary Fence

SCALE BAR 1:50



**DUBLIN ROAD**

Planters

**FOOTPATH**

FOOTPATH

## Bike Racks

Emergency Exit

Emergency Exit

Covered Area  
(Picnic Tables)

Covered Area  
(Picnic Tables)

## Toilets

# CAR PARK BUILDING

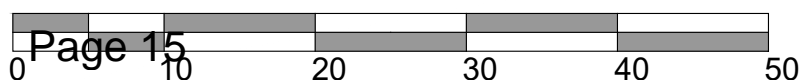
Greenery at the front (Dublin Road) to be fake grass or another hard synthetic surface. All foliage to be in planters as to not break ground.

All of the existing grounds are not to be disturbed, to avoid contamination when the surface is broken.

Marquees are to stretch across the entirety of all containers with no gaps, this is to reduce as much light and noise pollution to the neighboring residential properties and businesses as possible.

# Jury Court

SCALE BAR 1:500



NO.		REVISION / ISSUE		DATE	
<hr/>					
<h1>PLANNING</h1>					
<hr/>					
PROJECT		Boughton Square Development			
<hr/>					
ADDRESS		14 Dublin Road, Malone Lower, Belfast BT2 7HN			
<hr/>					
CLIENT		Seven7social LTD.			
<hr/>					
DRG NO	REV	SCALE		DATE	
L-01	E	1:300@A3		Jan 2022	
DRAWN BY		CHECKED BY			
MS		HJ			
<hr/>					
DRG TITLE		Site Layout Plan			



HR JESS  
Architecture | Planning | Surveying

1 JORDANSTOWN ROAD, NEWTOWN ABBEY, BT37 0QD.  
t: 028 9036 4615 e: info@hrjess.co.uk  
m: 07912693247 w: www.hrjess.co.uk

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Ground Floor  
Cecil Ward Building  
4-10 Linenhall Street  
Belfast  
BT2 8BP

11<sup>th</sup> May 2022

Dear Quintin

**Re: Provisional outdoor application for new outdoor area, Dublin Road**

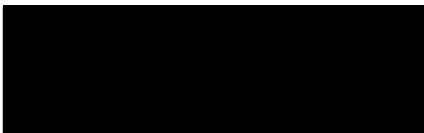
At this early stage of the large development police approvals cannot be confirmed. Police would require confirmation that all Belfast City Council requirements and conditions including all Building Regulations approvals have been adhered to.

Police can confirm that to date no current liquor licence is in place and that no occasional licence applications have been applied for or granted through the courts for the above outside area.

Please note that at this time there are no current grounds for police objections to the above application being further considered by Belfast City council, residents, other local business and NIFRS.

If the Licence is to be granted in due course please forward police a copy with any special conditions or restrictions with assurances that any current, relevant COVID – 19 guidance will be considered by the licence holder.

Kind Regards



Licensing Officer, Musgrave Station, Belfast

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**Belfast**  
City Council

## LICENSING COMMITTEE

<b>Subject:</b>	<b>Application for the Grant of a 7-Day Annual Outdoor Entertainments Licence</b>
<b>Date:</b>	17 August 2022
<b>Reporting Officer:</b>	Stephen Hewitt, Building Control Manager, Ext. 2435
<b>Contact Officer:</b>	Quintin Thompson, Senior Building Control Surveyor, Ext 2570

<b>Restricted Reports</b>	
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"/>

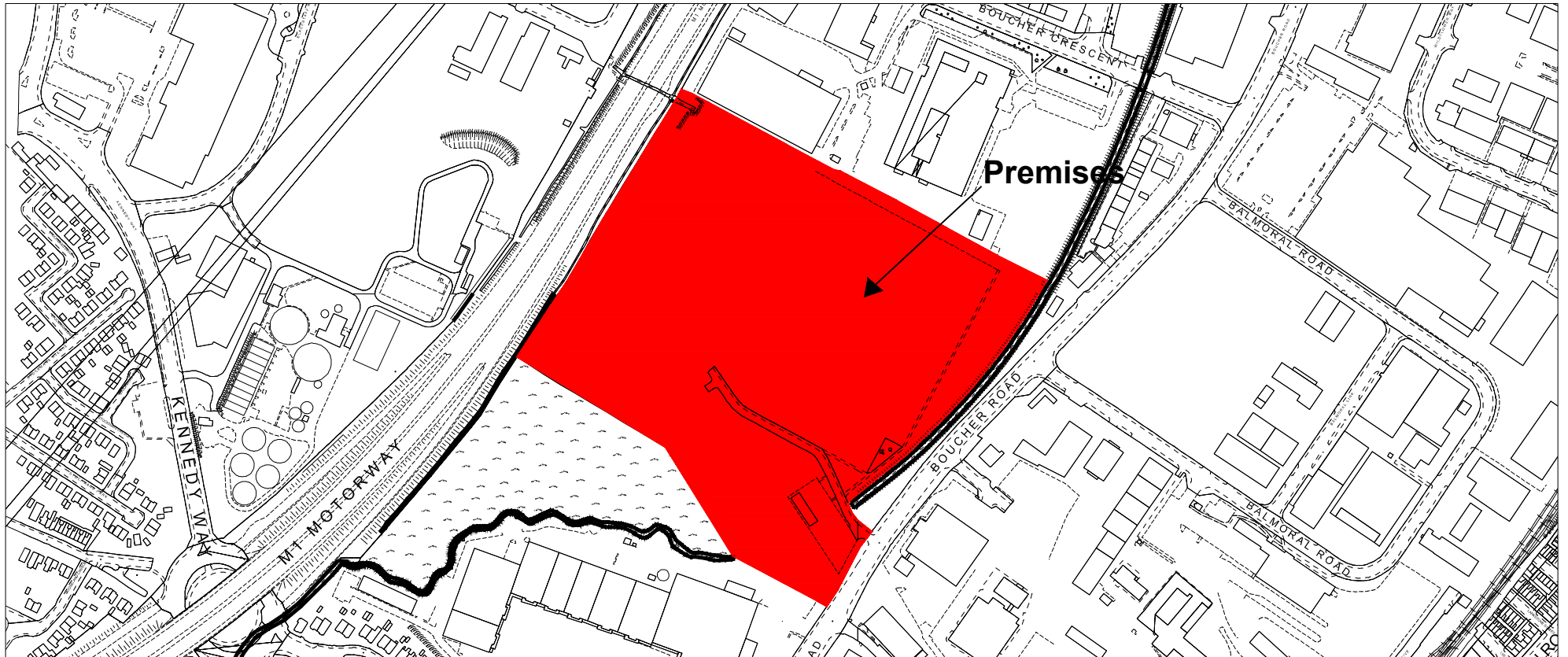
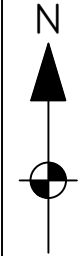
<b>Call-in</b>	
Is the decision eligible for Call-in?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

1.0	Purpose of Report or Summary of main Issues						
1.1	<p>To consider an application for the grant of a 7-Day Annual Outdoor Entertainments Licence to provide outdoor musical entertainment.</p> <table><tr><td><b>Area and Location</b></td><td><b>Ref. No.</b></td><td><b>Applicant</b></td></tr><tr><td>Boucher Road Playing Fields Boucher Road Belfast, BT12 6EU</td><td>WK/2020/02610</td><td>Ms Rose Crozier City and Neighbourhoods Services Dept. Belfast City Council</td></tr></table>	<b>Area and Location</b>	<b>Ref. No.</b>	<b>Applicant</b>	Boucher Road Playing Fields Boucher Road Belfast, BT12 6EU	WK/2020/02610	Ms Rose Crozier City and Neighbourhoods Services Dept. Belfast City Council
<b>Area and Location</b>	<b>Ref. No.</b>	<b>Applicant</b>					
Boucher Road Playing Fields Boucher Road Belfast, BT12 6EU	WK/2020/02610	Ms Rose Crozier City and Neighbourhoods Services Dept. Belfast City Council					
1.2	A location map is attached as Appendix 1.						

1.3	Members are reminded that all applications for the grant of Outdoor Entertainments Licences must be brought before Committee for consideration.
<b>2.0</b>	<b>Recommendations</b>
2.1	<p>Taking into account the information presented and any representations received Members are required to consider the application and to:</p> <ol style="list-style-type: none"> <li>Approve the application for the Grant of the 7-Day Annual Outdoor Entertainments Licence, or</li> <li>Approve the application for the Grant with special conditions, or</li> <li>Refuse the application for the Grant of the 7-Day Annual Outdoor Entertainments Licence.</li> </ol>
2.2	If an application is refused, or special conditions are attached to the licence to which the applicant does not consent, then the applicant may appeal the Council's decision within 21 days of notification of that decision to the County Court. In the case that the applicant subsequently decides to appeal, entertainment may not be provided by virtue of this application until any such appeal is determined.
<b>3.0</b>	<b>Main report</b>
	<b><u>Key Issues</u></b>
3.1	<p>Members are reminded that, at your meeting of 15 June 2022, following consideration of an objection to the application for the 14-day Occasional Outdoor Entertainments Licence for Boucher Road Playing Fields, you agreed to renew the licence.</p> <p><b><u>Details of the Premises</u></b></p>
3.2	The Licensee has now applied for a 7-day Annual Outdoor Entertainments Licence to permit the use of this large event space for more than 14 days per year. A 7-day Annual Entertainment Licence was previously in place for Boucher Road Playing Fields until 2014.
3.3	Belfast City Council currently holds both a 14-Day Occasional Outdoor Entertainments Licence and a 14-Day Occasional Indoor Entertainments Licence for a marquee in respect of Boucher Road Playing Fields.
3.4	Boucher Road has been used to provide large outdoor concerts for approximately 10 years.
3.5	<p>The current days and hours during which entertainment can be provided for both Occasional Licences are:</p> <ul style="list-style-type: none"> <li>Monday to Saturday: 11.30am to 11.00pm and</li> <li>Sunday: 12.30pm to 11.00pm</li> </ul>
3.6	<p>In addition, the following special conditions are attached to the licences:</p> <ol style="list-style-type: none"> <li>Maximum numbers will be agreed at the discretion of the Building Control Service and will vary depending upon individual concert set up proposals.</li> <li>Prior to any event taking place the promoters are required to demonstrate evidence of early consultation and have in place a robust system of dealing with any complaints, which has been agreed in advance with the Council.</li> <li>Any requests to provide entertainment later than 11.00 pm must be considered by the Licensing Committee and therefore must be made at least 3 months in advance of the proposed event.</li> </ol>

	<p>4. Should an application to provide entertainment beyond 11.00 pm be granted and the Council then receive a significant number of complaints regarding noise or the complaint is of such significant impact, authority is granted to the Director of Planning and Building Control, in consultation with the City Solicitor, to reduce the finishing time for any subsequent nights of the event, in which case the promoter will be required to make contingency arrangements.</p> <p><b><u>Representation</u></b></p> <p>3.8 Public notice of the application has been placed and no written representation has been lodged because of the advertisement.</p> <p><b><u>PSNI</u></b></p> <p>3.9 The Police Service of Northern Ireland have been consulted and has confirmed that they have no objection to the application.</p> <p>3.10 A copy of their correspondence is attached at Appendix 2.</p> <p><b><u>NIFRS</u></b></p> <p>3.11 The Northern Ireland Fire and Rescue Service have been consulted in relation to the application and has confirmed that they have no objection to the application.</p> <p><b><u>Health, safety and welfare</u></b></p> <p>3.12 Pre-event planning meetings are held with all relevant services, agencies and promoters for all large outdoor music events within the Boucher Road Playing Fields.</p> <p>3.13 The meetings are attended by Officers of the Council, Police Service of Northern Ireland, Northern Ireland Fire and Rescue Service, Department of Infrastructure, Translink, Northern Ireland Ambulance Service, promoters and their relevant service providers.</p> <p>3.14 Officers from Belfast City Council assess the Event Planning documents submitted by the promoter and carry out site inspections prior to and throughout the events to ensure compliance with relevant guidance in relation to fire safety, structures, access, egress and facilities for all.</p> <p><b><u>Noise nuisance and other complaints</u></b></p> <p>3.15 The Promoter of large outdoor music events must submit a Noise Management Plan which is provided to the Environmental Protection Unit (EPU) for evaluation. Council Officers work with the promoter to assess the noise that may be generated from the event and to minimise the potential for noise disturbance.</p> <p>3.16 Members should also recognise that noise generated by large scale outdoor concerts is likely to lead to some level of disturbance for local residents. Even if guideline levels are met there is no guarantee that complaints will not be received. Conversely, if a recommended level is exceeded this may not necessarily lead to complaints as people may be prepared to tolerate the event because it will only last for a limited period.</p> <p>3.17 These events do cause some anti-social behaviour on the routes of travel to and from the venue.</p>
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3.18	<b><u>Applicant</u></b>  The applicant, and/or their representatives, will be available at your meeting to answer any queries you may have in relation to the application.
4.0	<b>Financial &amp; Resource Implications</b>  None.
5.0	<b>Equality or Good Relations Implications/Rural Needs Assessment</b>  There are no issues associated with this report.
6.0	<b>Appendices – Documents Attached</b>
	<ul style="list-style-type: none"> <li>• Appendix 1 – Location Map</li> <li>• Appendix 2 - PSNI Response</li> </ul>



DRAWN BY <b>M Treacy</b>	<b>Boucher Road Playing Fields Boucher Road</b>	SCALE <b>1:5000 @ A4</b>
DATE <b>08/06/2022</b>		

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Building Control Service  
Ground Floor  
Cecil Ward Building  
4-10 Linenhall Street  
Belfast  
BT2 8BP

22<sup>nd</sup> June 2022

Dear Mary

[REDACTED]  
Boucher Road Playing Fields, Boucher Road, Belfast, BT12 6E.  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Please note that at this time that are no current police objections to the above applications being further considered by Belfast City council, residents, other local business and NIFRS. Please confirm with the applicants of Boucher Road [REDACTED] all outdoor event start and finishing times.

If the Licences are granted in due course please forward police a copy with any special conditions or restrictions with confirmation that all Belfast City Council requirements and conditions including all Building Regulations approvals have been adhered to and that any current, relevant COVID – 19 guidance will be considered by the licence holder.

Kind Regards

[REDACTED]

[REDACTED]

Licensing Officer, Musgrave Station, Belfast

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Subject:	Application for the Provisional Grant of an Amusement Permit – Elite Gaming, Little Vegas (NI) Ltd, 163 Stranmillis Road
Date:	17 August 2022
Reporting Officer:	Stephen Hewitt, Building Control Manager, Ext: 2435
Contact Officer:	Laura Hillis, Principal Building Control Surveyor, Ext: 2469

<b>Restricted Reports</b>	
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"/>

<b>Call-in</b>	
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 an application for the Provisional Grant of an Amusement Permit under the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (the Order).		
	<b>Premises and Location</b>	<b>Ref. No.</b>	<b>Applicant</b>
	Elite Gaming 163 Stranmillis Road Belfast, BT9 5AJ	WK/202002652	Little Vegas (NI) Limited Unit 7&8 Ardboe Business Park Kilmascally Road, Dungannon, Co. Tyrone BT71 5BJ
1.2	The Directors of Little Vegas (NI) Limited are Conor Francis Forbes, Aine Forbes, Ciara Anne Forbes and Shea Michael Forbes.		
1.3	A location map is attached as Appendix 1.		

1.4	Layout plans of the premises is included as Appendix 2.
<b>2.0</b>	<b>Recommendations</b>
2.1	<p>In considering the application for the Provisional Grant or Grant of an Amusement Permit, the Committee shall have regard to the Order and Belfast City Council's Amusement Permit Policy, as follows:</p> <ul style="list-style-type: none"> <li>a) The fitness of the applicant to hold a Permit having regard to his character, reputation and financial standing, and</li> <li>b) The fitness of any other person by whom the business is to be carried on under the Permit would be managed, or for whose benefit that business would be carried on,</li> <li>c) In considering the fitness of a body corporate to hold an amusement permit, the Council shall also have regard to the character, reputation and financial standing of the directors of the body corporate and any other persons who have executive control of it and who have a financial interest in it, as if the permit were, or were proposed to be, held by them jointly</li> <li>d) Representation, if any, from the sub-divisional commander of the Police Service of Northern Ireland in whose sub-division the premises are situated, and</li> <li>e) Representation, if any, as a result of the public notices of advertisement.</li> </ul> <p>You are then required to make a decision based on the following options set out under the Order.</p> <p>You must refuse the application unless satisfied that:</p> <ul style="list-style-type: none"> <li>a) The applicant is a fit person to hold an Amusement Permit; and</li> <li>b) The applicant will not allow the business proposed to be carried on under the Amusement Permit to be managed by, or carried on for the benefit of, a person other than the applicant who would himself be refused the grant of an Amusement Permit.</li> </ul> <p>Thereafter:-</p> <ul style="list-style-type: none"> <li>1) You may refuse the application after hearing any representations from third parties, or</li> <li>2) You may grant the application, subject to the mandatory condition that the premises are not to be used for an unlawful purpose or as a resort of persons of known bad character, and</li> <li>3) You may also grant the application subject to discretionary conditions outlined in the Order relating to the illumination of the premises, advertising of, and window displays on the premises and the display of information notices.</li> </ul>
2.2	<p>Should you be minded to refuse the application for the Provisional Grant of an Amusement Permit, or grant the Permit, subject to any discretionary conditions, you are required to advise the applicant of your intention to do so and you must afford the applicant the opportunity to make representations at a specified Licensing Committee meeting on the matter before making a final determination on the application.</p>

2.3	If, upon hearing the applicant, you refuse the application for the Provisional Grant of an Amusement Permit or decide to grant the application subject to discretionary conditions, the applicant may within 21 days from the date on which notice of the decision is served on him, appeal to the county court.
<b>3.0</b>	<b>Background</b>
	<p><b><u>Key Issues</u></b></p> <p>3.1 The Licensing Committee is responsible for determining all applications relating to the grant of Amusement Permits.</p> <p>3.2 Members are reminded that, at your meeting on 26 June 2013, you agreed to refuse the granting of an amusement permit to Little Vegas (NI) Ltd. for the ground and first floors of 163 Stranmillis Road.</p> <p>3.3 Subsequently, at your meeting on 21 August 2013 following the hearing of representations, you agreed to grant an amusement permit for the ground floor of the premises only.</p> <p>3.4 An amusement permit has been held for the ground floor of 163 Stranmillis Road since October 2013 and the premises has operated as a gaming centre ever since.</p> <p>3.5 The applicant company, which is the current amusement permit holder, now wishes to also use the first floor of the premises which they have rented since 2013, as part of the amusement arcade, to develop the business and aid its recovery after the pandemic.</p> <p>3.6 As there is no mechanism within the Order to enable the variation of a permit, such as for the increase in the floor area being used for the amusement arcade, an application must be made for the Provisional Grant or Grant of an Amusement Permit.</p> <p><b><u>Provisional Grant of an Amusement Permit</u></b></p> <p>3.7 There is scope within the Order to make application for the provisional grant of an amusement permit in respect of premises which are about to be, or are in the course of being, constructed, extended or altered.</p> <p>3.8 If the Council is satisfied that the premises would, if completed in accordance with plans deposited, be such that it would grant the permit, the Council may grant a provisional amusement permit. However, a provisional permit does not authorise the use of gaming machines until the permit is declared final.</p> <p>3.9 The Order stipulates that the Council, upon application by the permit holder, must declare the permit final when it is satisfied that the premises have been completed in accordance with the plans deposited with the council.</p> <p>3.10 Should Members be of a mind to grant the permit provisionally, Committee is requested to consider delegating authority to the Director of Planning and Building Control in consultation with the City Solicitor to issue the permit once all necessary technical requirements relating to health, safety, welfare and amenity have been completed to the satisfaction of the Building Control Service.</p>

	<b><u>Application details</u></b>
3.11	The application is for a total of 50 gaming machines, giving an increase of 25 machines over the existing arcade; all of which are to pay out a maximum all cash prize of £25.00. Admission to the arcade is restricted to persons aged 18 or over.
3.12	The proposed opening hours of the premises, as specified on the application, are:  Monday to Sunday: 10.00 am to 10.00 pm.
3.13	The current normal opening hours are indicated on the premises as being Monday – Saturday 11am – late and Sunday 1pm to late, however, currently the amusement arcade is open on a trial basis from 3pm – 3am (as indicated at entrance and on the premises website).
	<b><u>NIFRS</u></b>
3.14	The Northern Ireland Fire and Rescue Service has been consulted and confirmed that they have no objections to the application.
	<b><u>COMPLAINTS</u></b>
3.15	The Service has received 3 complaints concerning the premises, one in each of 2014, 2017 and 2018 each of which were resolved to the Service’s satisfaction (window display/door left open, window visuals and canopy without Planning Permission, Noise from patrons outside and dog left outside)
3.16	The Environmental Protection Unit / Night Time Noise Team have received 4 noise complaints, three in 2018 and one in 2019.
	<b><u>Applicant</u></b>
3.17	A representative from Little Vegas (NI) Ltd will be available to discuss any matters relating to the grant of the permit at your meeting.
	<b><u>Planning matters</u></b>
3.18	Planning permission for change of use of ground and first floor to an amusement arcade was granted on the 8 July 2012. As the amusement arcade has been open since 2013, they would have established use rights to operate as an amusement arcade under Planning Legislation.
3.19	In an important Court of Appeal decision in June 1999, it was confirmed that the Council, in determining applications for Amusement Permits, may take into account planning considerations but should be slow to differ from the views of the Planning Authority.
3.20	The Court also confirmed that the Council can take into account matters such as location, structure, character and impact on neighbours and the surrounding area.
3.21	A copy of the planning permission is attached as Appendix 3.
4.0	<b><u>Key issues</u></b>
	<b><u>Amusement Permit Policy</u></b>

4.1	<p>The Belfast City Council Amusement Permit Policy, ratified at Council on 1 May 2013, outlines those matters which may be taken into account in determining any amusement permit application and indicates that each application must be assessed on its own merits.</p> <p>All applications for the grant of an amusement permit are assessed against the Amusement Permit Policy.</p> <p>The key objectives of this policy are to:-</p> <ol style="list-style-type: none"> <li>1. Promote the retail vibrancy and regeneration of Belfast;</li> <li>2. Enhance the tourism and cultural appeal of Belfast by protecting its image and built heritage;</li> <li>3. Support and safeguard residential communities in Belfast;</li> <li>4. Protect children and vulnerable persons from being harmed or exploited by gambling;</li> <li>5. Respect the need to prevent gambling from being a source of crime and disorder.</li> </ol> <p>The Policy consists of two components which are considered below:</p> <p><u>1. Legal requirements under the 1985 Order</u></p>
4.2	<p>Members must have regard to the legal requirements under the 1985 Order relating to:</p> <p>(a) The character, reputation and financial standing of the applicant:</p> <p>References and additional supporting information for those associated with the application are attached as Appendix 4 to the report for consideration.</p> <p>(b) The nature of the premises and activity proposed:</p> <p>To ensure that the nature of the premises proposed is suitable for this location Members may consider how the premises are illuminated, the form of advertising and window display, and how notices are displayed on the premises. Whilst the appearance of amusement arcades is considered a Planning matter, Members may still wish to be satisfied that the facade integrates with adjacent frontages.</p> <p>(c) Opinions of the Police:</p> <p>The Police Service of Northern Ireland has been consulted and confirmed that they have no objections to the application. A copy of the correspondence is attached as Appendix 5.</p> <p>(d) Submissions from the general public:</p> <p>No objections have been received as a result of the public notices placed in the three local newspapers.</p>
4.3	<p><u>2. Assessment criteria for suitability of a location</u></p> <p>There are five criteria set out in the Policy which should typically be considered when assessing the suitability of a location for an amusement arcade. These are detailed below as they relate to this application.</p> <p><u>Evaluation of the application site against criteria outlined in the Amusement Permit Policy</u></p>

The application premises are at the end unit of a block of two and a half storey buildings located on the Stranmillis Road, at its junction with Sandymount Street. The ground floor area of the premises is currently licenced for amusement by gaming machines, and the licensed area is now being proposed to be extended to include the first floor.

(a) Impact on the retail and viability of Belfast City:

The application premises are located within the development limit of Belfast as designated in the Belfast Urban Area Plan 2001 and the succeeding draft Belfast Metropolitan Area Plan 2015 (dBMAP). The application site is located outside the Retail Core of Belfast City Centre and, due largely to its corner location, it does not break up an otherwise continuous shopping frontage.

b) Cumulative build-up of amusement arcades in a particular location:

The Amusement Permit Policy seeks to avoid the cumulative build up or clustering of amusement arcades in a particular location in the interest of promoting the retail vibrancy and regeneration of Belfast. Notwithstanding the fact that this amusement centre already operates on the ground floor, there are no other amusement arcades on this commercial frontage nor in the general area. The nearest amusement arcades to it are located at Bradbury Place, Shaftesbury Square and Botanic Avenue. Therefore, it is not considered that this application will contribute to the cumulative build-up of amusement arcades at a given location.

c) Impact on the image and profile of Belfast:

The application premises have no neighbouring property which is a tourism asset nor are they located at a Gateway location into Belfast. Accordingly, it is not considered that the proposed extension would adversely affect the image and profile of Belfast.

(d) Proximity to residential use:

The Permit Policy states that permits will not be granted in areas that are (i) predominantly residential in character nor will they be granted in (ii) non-residential property that is immediately adjacent to residential property.

(i) - predominantly residential in character

While the Permit Policy identifies areas that are not predominantly residential in character, such as shopping and commercial frontages in the City Centre and on the arterial routes that feed into the City Centre, it is not always possible to define what makes an area predominantly residential in character. Sometimes a judgement has to be made in deciding if an area is predominantly residential or not. The location of this application represents an example where such a judgement has to be made.

As outlined above, the Policy states that predominantly residential areas exclude shopping and commercial areas located along Belfast's Arterial Routes. Arterial routes typically accommodate a mix of uses including shopping, commercial, social, leisure, community and other uses, including other licensed uses.

Stranmillis Road is not recognised as 1 of the 18 arterial routes into the City. Beyond the City Centre, all other amusement arcades in Belfast are located on arterial routes except for the application site and a site on the Boucher Road.

Notwithstanding the above, it has to be acknowledged that the application site comprises one of a mix of uses located on the main commercial road frontage within Stranmillis Village. There is a broad mix of uses here, including cafes, estate agents and retail uses.

In order to assist Members in establishing whether the area is predominantly residential or not it is perhaps useful to consider that Stranmillis Village encapsulates an area extending from Chlorine Gardens to Ridgeway Street. Within this area there are approximately 14 residential streets and a mix of commercial uses, plus a church.

Within the context of the above information and in response to the first part of this criterion, Members must decide whether Stranmillis Village is predominantly residential in character and whether this proposed use is acceptable for this area.

(ii) - non-residential property that is immediately adjacent to residential property

The nearest residential properties to the proposed amusement arcade are:

- No.161a Stranmillis Road - first & second floor apartment in adjoining property;
- No.1 Sandymount Street – approx. 5m away to the rear, separated by an alleyway; and
- No.165 Stranmillis Road (ground floor apartment) / 2a Sandymount Street (first and second floor apartment - 10m away on the opposite side of Sandymount Street.

Because the proposed amusement arcade will provide gaming machines on two levels, the first floor will be immediately adjacent to No.161a Stranmillis Road. This is a 4 bed apartment currently licensed as an HMO which would appear to be occupied, and the amenity of the occupants may be impacted by living adjacent to the gaming centre.

Under the Amusement Permit Policy, the use of the first floor as an amusement arcade 'immediately adjacent' to residential property is not considered acceptable. The continuous week-long hours of operation in this arcade (from 10am until late Mon-Sat, 11am – late Sunday – as indicated on the premises' front door) would impact on the residential amenity of existing and future occupants. Customers will be using the machines on the first floor into the early hours of the morning at a time when it is expected that residents in the adjacent flat (No.161a) may be sleeping. While it is acknowledged that there is scope to attenuate noise levels from gaming machine areas, the Permit Policy adopts a precautionary approach to proposals that immediately abut residential property and does not favour permitting them.

#### Conclusion on criterion (d) - Proximity to residential use

While it is open to interpretation whether this area is predominantly residential in character; it is clear that the first floor of the proposed premises is immediately adjacent to residential use and therefore this part of the application does not comply with this criterion in the Policy. However, Members are reminded that they can depart from the Policy where they consider it appropriate to do so.

Members should note that, at its meeting on 26 June 2013 for an earlier permit application on this site, the Committee stated that it was minded to refuse the application in respect of the entire premises, on grounds that included:

- The arcade would be situated in an area which was predominantly residential in character and its presence there would have a detrimental impact upon the amenity of the area, including residential amenity.

4.4	<ul style="list-style-type: none"> <li>• The arcade would not be in keeping with existing businesses in the area.</li> </ul> <p>Members are also reminded that subsequent to a further meeting in respect of the 2012/2013 application on 21 August 2013, the Committee agreed to approve the grant of an Amusement Permit in respect of the ground floor of the premises only.</p> <p><b>(e) Proximity to schools, youth centres and residential institutions for vulnerable people</b></p> <p>There are no schools, youth centres or residential institutions within 200m of the application site. The application would therefore comply with this criterion of the Policy.</p> <p><u>Conclusion</u></p> <p>Whilst the location of the permit application satisfies most criteria in the Amusement Permit Policy it is not considered to meet criteria (dii). This criterion relates to the proximity of proposed premises immediately adjacent to residential use. Having regard to the potential impact on residential amenity the Permit Policy advises a precautionary approach by discouraging the opening of amusement arcades in such locations.</p> <p>Members are reminded that, in addition to the above legal requirements and assessment criteria, the Committee may take into account any matter which is deemed relevant. Members may depart from the Policy where it is appropriate to do so, although it is envisaged that this should only happen in exceptional circumstances.</p> <p>A copy of the Council's Amusement Permit Policy is attached for your information and reference as Appendix 6.</p>
5.1	<p><b><u>Financial &amp; Resource Implications</u></b></p> <p>Administration of Amusement Permit applications is included in current budgetary estimates.</p>
6.1	<p><b><u>Equality or Good Relations Implications/Rural Needs Assessment</u></b></p> <p>None.</p>
7.0	<p><b>Appendices – Documents Attached</b></p> <ul style="list-style-type: none"> <li>• Appendix 1 – Location Map</li> <li>• Appendix 2 – Layout plan of the premises</li> <li>• Appendix 3 - Copy of the Planning Permission</li> <li>• Appendix 4– References</li> <li>• Appendix 5 – PSNI Correspondence</li> <li>• Appendix 6 – Belfast City Council's Amusement Permit Policy</li> </ul>





Belfast Mapping Data v3.0  
Prepared by I.S.B.  
Based upon the Ordnance Survey  
Of Northern Ireland map with the  
permission of the Director & Chief Executive  
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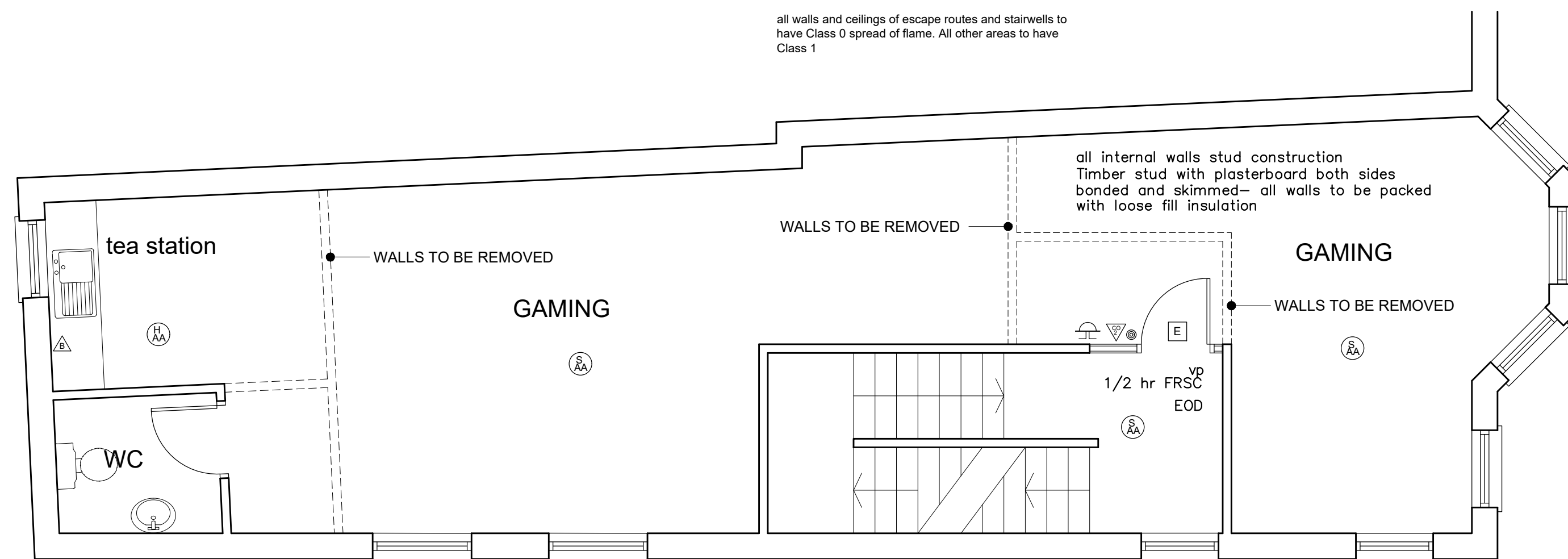


DRAWN BY **M Treacy**  
DATE **05/08/2022**

Elite Gaming  
163 Stranmillis Road

SCALE 1:1250 @ A4

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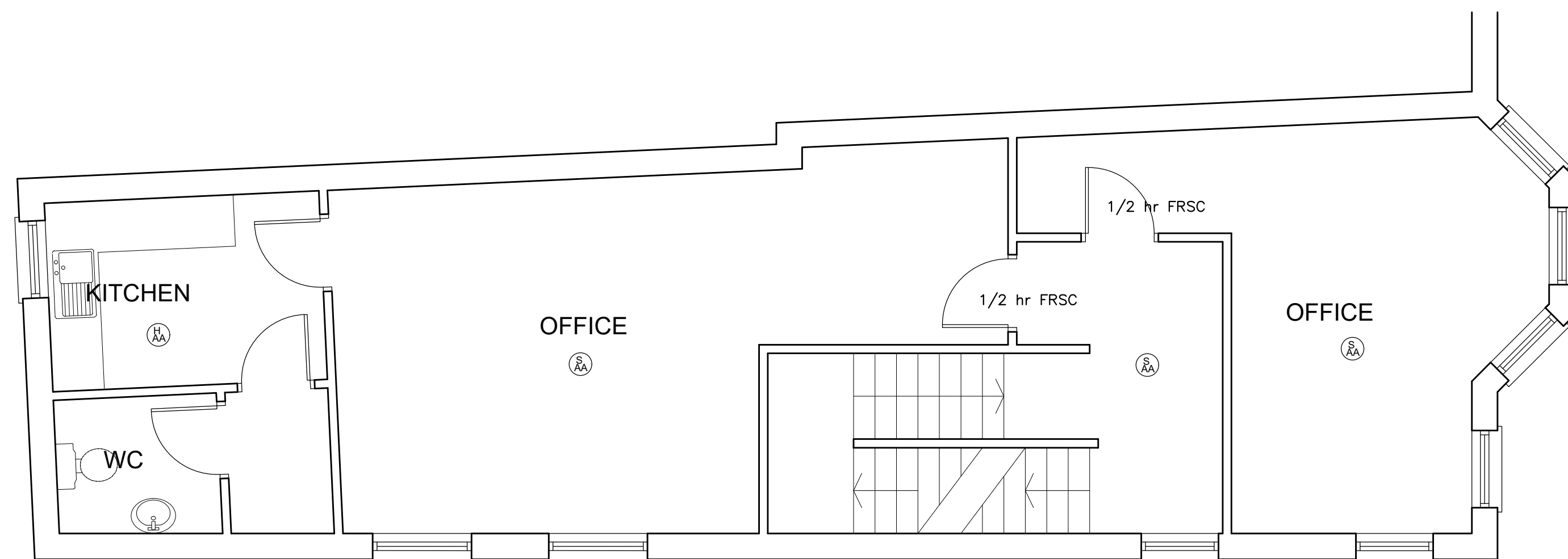
## PROPOSED FIRST FLOOR LAYOUT PLAN

PERMANENT MANIFESTATION TO ALL GLAZED  
SCREENS/DOORS, TO BE DISTINGUISHABLE THROUGH  
SUITABLE VISUAL CONTRAST FROM THE BACKGROUND,  
TO BE LOCATED VISUAL BETWEEN 850mm AND 1000mm FROM  
FINISHED FLOOR LEVEL AND BETWEEN 1400mm AND  
1600mm FROM FINISHED FLOOR LEVEL, I.E. TWO BANDS

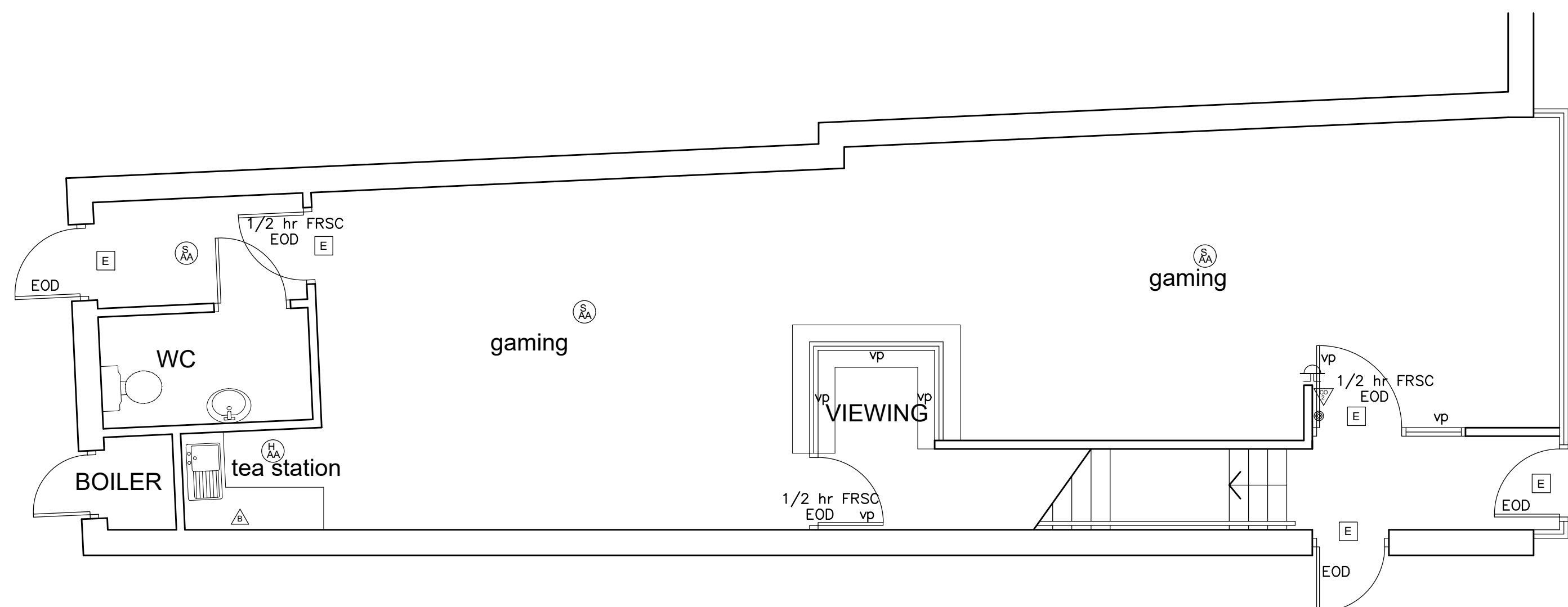
VISUAL CONTRAST BY HAVING A DIFFERENCE OF 30 POINTS OR MORE IN LIGHT REFLECTANCE VALUE (LRV) TO BE ACHIEVED BETWEEN DOORS AND FRAME

THE FORCE REQUIRED TO OPEN A DOOR FITTED WITH SELF CLOSING DEVICE SHALL BE NOT MORE THAN, 30 NEWTONS BETWEEN 0 (DOOR CLOSED) AND 30 OF THE OPENING ARC OF THE DOOR AND 22.5 NEWTONS FROM A POINT GREATER THAN 30 OF THE OPENING ARC OF THE DOOR

FURNITURE IS TO COMPLY WITH BS8206 PART2 1992 TABLE 4  
WITH A 30 POINTS DIFFERENCE BETWEEN THE ELEMENTS WHERE  
ALL DOOR SURROUNDS SHALL BE DISTINGUISHABLE, THROUGH SUITABLE  
VISUAL CONTRAST, FROM THE ADJACENT WALL SURFACE IN WHICH IT IS SET



## EXISTING FIRST FLOOR LAYOUT PLAN



## EXISTING GROUND FLOOR LAYOUT PLAN

VISUAL CONTRAST BY HAVING A DIFFERENCE OF 30 POINTS OR MORE IN LIGHT REFLECTANCE VALUE (LRV) TO BE ACHIEVED IN ALL OR ANY OF THE FOLLOWING AS APPLICABLE :

- A - RAISED CURB TO EDGE OF RAMP V RAMP
- C - NOSING TO STEPS v STEPS
- D - SPOORAIL TO STEPS v BACKGROUND AGAINST WHICH IT IS SEEN
- E - DOOR OPENING FURNITURE v DOOR LEAF (EXTERNAL + INTERNAL)
- F - TOP AND SIDE FREE EDGES OF GLAZED ENTRANCE DOOR v GLAZED SCREEN
- G - DOOR SURROUND v ADJACENT WALL SURFACE
- H - EXTERIOR DOOR ADJACENT OF BEING HELD OPEN OR SELF-CLOSING DOOR v LEADING EDGE OF DOOR v OTHER SURFACES OF DOOR LEAF
- I - DOOR SURROUND TO V SURROUNDING FACE PLATE AND FACE PLATE v SURFACE ON WHICH IT IS MOUNTED
- J - LIFTING DEVICE CONTROL BUTTONS v SURROUNDING FACE
- K - FACE PLATE v SURROUNDING FACE
- L - LIFT DOOR v ADJACENT LANDING AND INTERNAL CAR AND WALL SURFACES
- M - ELEVATOR FURNITURE TO FIXED STRETCH SYSTEMS IN GUEST BEDROOM v CONTROL OF DOOR
- N - SWITCH OR CONTROL FACE PLATE v BACKGROUND AGAINST WHICH IT IS SEEN
- O - NECESSARY FITTING HARDWARES AND SUPPORT RAILS v BACKGROUND AGAINST WHICH THEY ARE SEEN

**ESCAPE LIGHTING**

Escape lighting to be installed in accordance with BS 5266 Part 1: 2005 as indicated on Plans.

8 Watt non-maintained emergency light point.

External sustained emergency bulkhead light point.

Emergency light point ( twin lamp type )

**FIRE ALARM SYSTEM**

Fire alarm to BS 5839 Part 1: 2013 Type M with call points and sounders as indicated on Plans.

Fire alarm control located inside entrance lobby.

Fire alarm control panel.

Manual Call Point ( Break Glass ).

Alarm Sounder Device ( Bell or Siren ).

Automatic Smoke Detector  
CW Mounting Base







Automatic Heat Detector  
CW Mounting Base

Smoke and Heat detectors/alarms to be to BS ISO 3864-1:2011

Smoke and Heat to be 65db.

- ☐ N1 General Fire Notice
- ☐ N6 "Fire Door - Keep Shut" Notice

FIRE INSTRUCTIONS. PF38

-  Fire Alarm Call Point.
-  Fire Blanket.
-  Fire Extinguisher - 9 Litre Water Type.
-  Fire Extinguisher - Dry Powder Type.
-  Fire Extinguisher - 9 Litre Pre Mix Foam Type.
-  Fire Extinguisher - Carbon Dioxide Type.

EXIT SIGNS

Exit signs to be installed as indicated on Plans.  
Exit signs to comply with BS ISO 3864-1:2011

Fire exit sign	E
Fire exit sign with directional arrow	E

For lighting systems serving other areas it may be appropriate to provide luminaires for which photometric data is not available or luminaires that are lower powered and use less efficient lamps. In such areas, the installed lighting shall have an average initial (100 hour) lamp plus ballast efficacy of not less than 50 lamp-lumens per circuit-Watt.

OUTLETS, SWITCHES AND CONTROLS SHALL BBE SET OUT  
AS FOLLOWS:

- SOCKETS TO NON-PERMANENTLY CONNECTED APPLIANCES, BETWEEN 400-1000mm FROM FLOOR AND NOT LESS THAN 350mm FROM RETURN WALL,
- SWITCHES FOR PERMANENTLY WIRED APPLIANCES, BETWEEN 400-1200mm ABOVE FLOOR.
- SWITCHES FOR PORTABLE ELECTRICAL LIGHTS BETWEEN 900-1100mm ABOVE FLOOR (LARGE PUSH PAD TYPE).
- VENTILATOR CONTROL (OR SIMILAR NEEDING GRADUAL MANIPULATION), 750-1200mm ABOVE FLOOR.
- PUSH BUTTON (LIMITED DEXTERITY), NOT MORE THAN 1200mm ABOVE FLOOR.
- (NOTE: THE SWITCH OR CONTROL FACE PANEL SHALL BE DISTINGUISHABLE THROUGH VISUAL CONTRAST FROM BACKGROUND AGAINST WHICH IT IS SEEN).

**APS**  
ARCHITECTS LLP

# PROPOSED ALTERATIONS AT 163 STRANMILLIS ROAD BELFAST

Project Ref: F.015C

Drg. No. BC-03  
SCALE 1/50  
DATE MARCH 2022

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Department of  
the Environment  
www.doem.gov.uk

## **APPROVAL OF PLANNING PERMISSION**

**Planning (Northern Ireland) Order 1991**

**Application No: Z/2010/1626/F**

**Date of Application: 29th November 2010**

**Site of Proposed Development: 163 Stranmillis Road  
Belfast  
BT9**

**Description of Proposal: Change of use of ground and first floor offices to amusement arcade.**

**Applicant: Mr Tim Kerr  
Address:**

**Agent: Peter J Morgan  
Address: 17 Glengoland Crescent  
BT17 0JG**

**Drawing Ref: 02, 01, 03**

**The Department of the Environment in pursuance of its powers under the above-mentioned Order hereby**

## **GRANTS PLANNING PERMISSION**

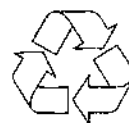
**for the above-mentioned development in accordance with your application subject to compliance with the following conditions which are imposed for the reasons stated:**

- 1. As required by Article 34 of the Planning (Northern Ireland) Order 1991, the development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.**

**Reason: Time Limit.**

**Application No. Z/2010/1626/F**

**BLF**



Informatives

1. The applicant is advised to ensure that all plant and equipment used in connection with the development is so situated, operated and maintained as to prevent the transmission of noise to nearby properties.
2. In order to prevent the transmission of noise to nearby properties it is recommended that gaming machines and slot machines to be used in the proposed arcade must be of a specification that includes a volume control setting as proposed by the agent.
3. Doors and windows of the proposed arcade should be kept closed while in operation to prevent noise breakout, unless it can be demonstrated by way of an acoustic Verification Report that there is no negative noise impact on nearby premises with windows or a door open while the arcade is in operation.
4. This permission does not alter or extinguish or otherwise effect any existing or valid right of way crossing, impinging or otherwise pertaining to these lands.
5. This permission does not confer title. It is the responsibility of the developer to ensure that he controls all the lands necessary to carry out the proposed development.

Dated: 15th February 2012

Authorised Officer

  
PAUL MONTGOMERY



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Building Control Service  
Ground Floor  
Cecil Ward Building  
4-10 Linenhall Street  
Belfast  
BT2 8BP

22<sup>nd</sup> June 2022

Dear Mary

[REDACTED]  
[REDACTED]  
[REDACTED]  
Elite Gaming, 163 Stranmillis Road, Belfast, BT9 5AJ.  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Please note that at this time that are no current police objections to the above applications being further considered by Belfast City council, residents, other local business and NIFRS.

If the Licences are granted in due course please forward police a copy with any special conditions or restrictions with confirmation that all Belfast City Council requirements and conditions including all Building Regulations approvals have been adhered to and that any current, relevant COVID – 19 guidance will be considered by the licence holder.

Kind Regards

[REDACTED]

[REDACTED]

Licensing Officer, Musgrave Station, Belfast

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# Amusement Permit Policy





## Introduction

To operate an amusement arcade a person must apply to Belfast City Council ('the Council') for an amusement permit. The Council is directly empowered to grant or refuse amusement permits in Belfast under the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 as amended, ('the 1985 Order').

This means that the Council issue amusement permits to premises, typically described as amusement arcades, which have 'amusement with prizes machines'. These types of machines are normally known as gaming machines. Except in the case of renewing amusement permits, applicants are normally required to first obtain planning permission for an amusement arcade before applying for an amusement permit.

## What are gaming machines and amusement arcades?

A gaming machine (or amusement with prizes machine) means any machine which is used for playing a game of chance, by the insertion of money into it, with the aim of winning money. There are lower prize gaming machines and higher prize gaming machines. Use of the higher prize gaming machines is restricted to adults only (i.e. persons aged 18 or over). In Belfast, admittance to amusement arcades is usually restricted to adults because many premises only operate higher prize machines.

An amusement arcade is defined as premises which are being used wholly or mainly for amusement by gaming machines. The Council will normally deem this to be the case when there is at least one more gaming machine than the total number of all other types of machines or otherwise when it can be reasonably viewed that a substantial proportion of the business relates to the provision of gaming machines (more than de minimus)

Registered Clubs, bookmaking offices, commercial bingo clubs, public houses and licensed hotels are not required to have an amusement permit in order to have gaming machines, though other aspects of gambling legislation in Northern Ireland may apply to gaming machines in these establishments.

## Aim and scope of policy –why does the Council need an amusement permit policy?

The overall aim of the amusement permit policy is to serve as a guide for Elected Members, Council officers, applicants and the wider public on applications for amusement permits in the Belfast City Council area. By outlining those matters which may be taken into account in determining an application for an amusement permit this policy has been developed to introduce greater clarity, transparency and consistency to the decision-making process.

The need for this policy was highlighted by previous Court decisions on amusement permit applications. These demonstrated the need for the Council to make its position clear on the issues to be considered when deciding to grant or refuse an amusement permit application under the 1985 Order. Some of these issues, such as location, structure, character and impact on neighbours and the surrounding area overlap with planning considerations. While the Council should be slow to differ from the views of the planning



authority, it is entitled to do so. In coming to its own decision, the Council is not bound to accept in its entirety the decision of the planning authority.

This policy is framed to be broadly consistent with regional planning guidance on amusement arcades and, at the same time, it is tailored to take into account local considerations particular to Belfast, including the location of existing amusement arcades in the City.

Whilst this policy strives to introduce greater certainty into decision-making on amusement permit applications, its contents do not prejudice the statutory power of the Council, under Article 111 of the 1985 Order, to consider any ground it deems reasonable to refuse to grant an amusement permit. The Council will therefore take into account a change in circumstances that may influence the Amusement Permit Policy and any criteria set out within it.

Although the policy is primarily intended to serve as a guide for assessing applications for amusement permits by the Council's Licensing Committee, given its interrelationship with planning considerations the policy will also be a material consideration to related applications for planning permission by the Council's Town Planning Committee. This is because applicants are usually required (except in the case of renewing amusement permits) to first obtain planning permission for the proposed amusement arcade before applying for an amusement permit.

At present, the Council is consulted on planning applications and DOE (NI) Planning makes the final decision on all planning applications, including those for amusement arcades. However, this arrangement is set to change and the Council will become the statutory planning authority for planning applications of this type in 2015. Until this transfer of power takes place, this amusement permit policy will be a material consideration for DOE (NI) Planning in determining planning applications for amusement arcades in Belfast.

This policy outlines five criteria that the Council will typically consider when assessing the suitability of a location for a proposed amusement arcade. As these criteria largely overlap with planning considerations, reference to them by DOE (NI) Planning is intended to reduce the likelihood of conflicts arising on issues that are common to both planning applications and respective permit applications.

Notwithstanding those considerations or criteria expressly outlined in this policy, the Council will take into account any matter which it deems relevant. The Council may also depart from the policy where it appears appropriate or necessary, although it is envisaged that this will only happen in exceptional circumstances.

In exercising its duties and responsibilities under this policy, the Council has been, and will continue to be, mindful of its obligations under the Human Rights Act 1998. The Council will endeavour to ensure that all action taken on foot of this policy is lawful, reasonable and proportionate.

It is anticipated that the policy will be reviewed every three years so that it can remain abreast of the dynamics of the gambling industry and any changes in legislation.



## Objectives of the Policy

The key objectives of this policy can be largely linked to the Council's overarching strategic goal of improving the quality of life for present and future generations in Belfast by making it a better place in which to live, work, visit and invest. Against this background and in light of the research carried out, the interrelated key policy objectives are to:

1. promote the retail vibrancy and regeneration of Belfast;
2. enhance the tourism and cultural appeal of Belfast by protecting its image and built heritage;
3. support and safeguard residential communities in Belfast;
4. protect children and vulnerable persons from being harmed or exploited by gambling;
5. respect the need to prevent gambling from being a source of crime and disorder.

The first two policy objectives are in line with our key strategic objectives to support the local economy, including through the development and promotion of tourism. The third objective ties in with the 'support people, communities and neighbourhoods' aspect of our Investment Programme. The final two objectives are consistent with the core objectives of the Gambling Act 2005, which at present only applies to Great Britain but is currently being considered by the Department of Social Development (NI) in the context of the review of gambling legislation in Northern Ireland. .

## Assessing amusement permit applications

To meet these policy objectives when determining amusement permit applications the Council will **assess each application on its own merits** and will:

1. have regard to the requirements set out in the 1985 Order; and will
2. assess the suitability of the location for a proposed amusement arcade, which will typically be based on a number of assessment criteria set out in this policy. These reflect, inter alia, the key objectives of the policy and in light of all research findings, together with a comparative analysis with Great Britain (GB) and the Republic of Ireland (ROI).

The Council will consider both these components of policy when deciding on **new** amusement permit applications. When determining an application for **renewal** of an amusement permit, the primary focus will be on the requirements set out in the 1985 Order, and this policy will only be applied in very exceptional circumstances.

Also, prior to granting or renewing any amusement permit the Council will have regard to comments received from any relevant statutory agency in relation to fire or other safety matters.





## **Legal requirements under the 1985 Order**

In accordance with the 1985 Order, the Council will have regard to the following statutory requirements:

- 1. The character, reputation and financial standing of the applicant;**
- 2. The nature of the premises and activity proposed;**
- 3. Opinion of the Police; and**
- 4. Submissions from the general public.**

Each of these requirements is outlined below.

### **1. The character, reputation and financial standing of the applicant**

*In considering the fitness of an applicant to hold an amusement permit, the Council will take into account:*

- *the character and reputation of the applicant, as corroborated by references from impartial and reliable sources, including the Police; and*
- *the financial standing of the applicant, as verified by independent credit check organisations and financial references.*

#### **Justification and clarification**

Taking on board the prevailing statutory desire by government to make gambling fair and crime-free, this policy aims to ensure that players are protected from illegal or unscrupulous operators.

Under the 1985 Order, the Council is obliged to consider the fitness of a person who is, or proposes to be, the occupier of the premises. Accordingly, the Council will consider the character, reputation and financial standing of the applicant and any person appointed to manage the business. The applicant can be an individual, a company or a partnership. In the case of the latter two, the fitness of the corporate organisation is relevant, together with the character of the directors and people with executive control.

As well as taking into account the considered views of the Police (see No.3 below), the Council will require the reputation of the applicant to be endorsed by references from sources such as bank managers, accountants and elected representatives. In order to testify to their financial standing, applicants will be asked to provide a credit report from an independent credit rating agency, together with financial references.

### **2. The nature of the premises proposed**

*The Council will aim to ensure that the nature of the premises proposed is appropriate for the location in question. This will involve careful consideration of the following matters: how premises are illuminated; the form of advertising and window display; and how notices are displayed on the premises.*

*Guidance in respect of the above 3 considerations can be found in Appendix A to this policy.*

#### **Justification and clarification**

As far as amusement arcades and gaming machines are concerned, legislation exists to regulate rather than promote this form of gambling. Accordingly, the Council are keen to ensure that the premises do not openly encourage gambling.



### 3. Opinion of the Police

*The Council will attach significant weight to the opinion of the Police when assessing an application, in relation to their views on the character and reputation of the applicant, as well as the location of the premises.*

#### Justification and clarification

Under the 1985 Order, the Council must consult with the Police on amusement permit applications. It is important to ascertain the views of the Police, not only in respect of the character of the applicant but also the suitability of the area for an amusement arcade. For example, it may be relevant to the assessment of the application if the Police indicate that the vicinity of the proposed amusement centre is associated with abnormal levels of antisocial behaviour, or has been the subject of police intervention in the past. To this end, the Council will request that the Police complete a short questionnaire on the applicant and premises, a sample copy of which is contained in Appendix B.

### 4. Submissions from the general public

*The Council will take into account the number and nature of submissions received from the general public when determining an amusement permit application, particularly those from persons or representatives of persons in neighbouring properties.*

#### Justification and clarification

Within seven days of making an amusement permit application the applicant must place amusement permit advertisements in three out of four newspapers named by the Council. This public advertisement allows objections and submissions to be made by any person. All applications for amusement permits are referred to the Council's Licensing Committee who will take into account all submissions, whether they are made in opposition to an amusement permit, in support of a permit, or submitted as observations only.

Bearing in mind the key objectives of this policy, particularly those relating to support for retailing and residential communities, the Council will carefully consider submissions received from neighbouring properties and will consider them whether they are made by residents, businesses or any other interested party.

### Belfast City Council's criteria for assessing the suitability of a location

The Council will objectively assess each application on its own merits.

Five criteria will typically be used when assessing the suitability of a location for a proposed amusement arcade:

- 1. Impact on the retail vitality and viability of Belfast City;**
- 2. Cumulative build-up of amusement arcades in a particular location;**
- 3. Impact on the image and profile of Belfast;**
- 4. Proximity to residential use; and**
- 5. Proximity to schools, youth centres and residential institutions for vulnerable people.**

#### Clarifications:

Before we look at these in detail, we must first make a number of clarifications on the use of these assessment criteria:





- While it is acknowledged that the existing use of the proposed premises will be a material consideration in the assessment of an amusement permit application, we may not accord substantial weight to the fact that the property (unless it was previously an amusement arcade) is vacant or used for non-shopping purposes, for example, a fast-food outlet or other licensed business. In other words, while every application will be carefully considered the Council will not allow the non-shopping use of a property or the fact that it is vacant to overshadow all other considerations to the detriment of reaching a balanced decision.
- An amusement arcade accommodates a particular type of gambling activity and should not be generalised as another form of non-shopping use or licensed activity. It is a sui generis development (of its own kind) that has its own matters to address under the 1985 Order.

Each of the 5 criteria is now explained.

### **1. Impact on the retail vitality and viability of Belfast City**

*While an application for an amusement permit in Belfast City Centre will be assessed on its merits, it will only be granted in the retail core of Belfast City Centre if it is:*

- *A renewal of an existing amusement permit; or*
- *Part of a major, retail-led mixed use development; or*
- *An upper storey development.*

*In addition, the Council will not grant an amusement permit in any part of the Belfast City Council area where an amusement arcade would break up an otherwise continuous shopping frontage.*

#### **Justification and clarification**

In line with the objective to promote the retail vibrancy and regeneration of Belfast, the Council is keen to promote pedestrian flows in Belfast's busiest shopping streets by supporting retailers and retail development.

In stark contrast to shop units, amusement arcades are commercial leisure venues which do not have a general appeal for visitors and only have a small customer base. Only 6 per cent of people surveyed in NI in 2010 stated that they used fruit or slot machines. Viewed in this context, the opening of amusement arcades in the retail core of Belfast can be considered incompatible with the Council's aim to promote shopping in the main shopping streets of Belfast City Centre. The extent of the retail core within Belfast City Centre is shown in Appendix C.

Encouraging retailing in the retail core is in accordance with retail planning policy outlined in the DOE's Planning Policy Statement 5 on Retailing and Town Centres (PPS 5, paragraphs 11, 23 and 25).

The Council's aim of maintaining a continuous shopping frontage in all parts of Belfast is in keeping with DOE (NI) Planning's 'Development Control Advice Note 1' (DCAN 1). An application for an amusement arcade is deemed to break up a continuous shopping frontage where it proposes to replace a shop unit that is bordered by an adjacent shop unit either side of it. This may also apply to situations when one or more of the shops are vacant at the time. For the purposes of this policy a shop unit can be defined as one belonging to Class A1 of the Planning (Use Classes) Order (Northern Ireland) 2004. A copy of this use class is contained in Appendix D.

### **2. Cumulative build-up of amusement arcades in a particular location**

*The Council will limit the number of amusement permits it grants to one per shopping or commercial frontage and one per shopping centre. Where this number of permits has already been granted, or exceeded, no more amusement permits will be considered.*



*Under this criterion, 2 or more amusement arcades in adjacent ground-floor units will not be allowed (except for those already existing), including the ground-floor extension or merger of an existing establishment into an adjoining unit.*

#### **Justification and clarification**

As the Council want to promote retailing, it is anxious to avoid a cumulative build-up or clustering of amusement arcades in a particular location. This approach is also supported by the research finding that there are twice as many machines per person in Belfast than in GB as a whole.

Unlike betting offices and bingo clubs, where licensing is a matter for the courts in Northern Ireland, there is no legal requirement by the applicant to demonstrate that a demand exists for an amusement arcade in a particular area. However, DOE (NI) Planning does consider the cumulative impact of these forms of developments. (DCAN 1) refers to the need to '*take into account the effect of larger numbers on the character of a neighbourhood*'. Likewise, Planning Policy Statement 5 on Retailing and Town Centres (PPS 5) highlights the requirement to avoid a '*clustering*' of non-retail uses, a term which is inclusive of amusement arcades, in Retail Cores and District Centres.

For the purposes of this amusement permit policy, a shopping or commercial frontage can be defined as a group of mainly ground-floor businesses that shares a continuous frontage and which is usually separated from other frontages by a different road or street name. A shopping centre refers to a group of retail and non-retail uses that is usually anchored by a large store. Beyond Belfast City Centre, shopping centres are referred to as District Centres and are located off Arterial Routes, which are the major transport thoroughfares into the City Centre.

### **3. Impact on the image and profile of Belfast**

*Amusement permits will not be granted at locations that are regarded as tourism assets, and at Gateway locations in Belfast City Centre.*

#### **Justification and clarification**

In keeping with one of the key objectives of this policy, namely to enhance the tourism and cultural appeal of Belfast by protecting its image and built heritage, the Council will not grant amusement permits at locations regarded as tourism assets and at key entrance junctions (Gateways) into Belfast City Centre.

The Council will protect those areas, buildings and their settings (if appropriate) that are inherently linked to the image and tourist profile of the City. As far as this policy is concerned, the setting of a tourist asset relates to the neighbouring property either side of its main entrance, whether or not this neighbouring property is adjacent to it, or separated from it by a road or street.

A tourism asset is any feature associated with the built or natural environment that is of intrinsic interest to tourists. Most of the tourism assets in Belfast are listed buildings. These often feature in the historical database of the Northern Ireland Environment Agency and as tourist attractions in Visitor Guides for Belfast. If you need clarification on what is considered a tourist asset you can contact us.

Under this criterion, the Council will also protect the Gateway locations at the edge of Belfast City Centre which are considered suitable for landmark development capable of raising the profile of Belfast. These Gateway locations are key entrance points into the City Centre, where visitors form their first overall impression of the city centre. Viewed in this context, it is considered that granting amusement permits for new premises at ground-floor level is inappropriate for these locations. If you need clarification on what is considered a Gateway location you can contact us.



#### 4. Proximity to residential use

*Amusement permits will not be granted in areas that are predominantly residential in character, including local centres located within these areas. They will also not be granted in non-residential property that is immediately adjacent to residential property.*

##### Justification and clarification

Bearing in mind that one of the Council's corporate objectives is to 'support people, communities and neighbourhoods' and that this is also a key objective of this policy, the Council will seek to prevent amusement arcades opening in predominantly residential areas.

Residential areas commonly have a local centre. PPS 5 describes a local centre as:

*'Small groupings of shops, typically comprising a general grocery store, a sub-post office, occasionally a pharmacy and other small shops of a local nature.'*

Clearly, a local centre in a predominantly residential area should provide local shops and services that cater for the daily needs of the wider community, as opposed to accommodating an amusement arcade which provides a non-essential, gambling-based leisure activity for a small number of people.

This criterion is also consistent with DOE (NI) planning policy guidance. DCAN 1, states that amusement arcades *'are not normally acceptable near residential property'*.

Areas that are predominantly residential in character obviously exclude extensive industrial or business areas which are clearly distinct from housing. Predominantly residential areas also exclude shopping and commercial areas located along Belfast's Arterial Routes.

Arterial routes are the major access roads and public transport corridors into the City Centre. They typically accommodate the greatest mix of uses outside of the City Centre, including shopping, commercial, social, leisure, community and other uses. There are 18 of these arterial routes in Belfast.

#### 5. Proximity to schools, youth centres and residential institutions for vulnerable people

*The Council will not grant amusement permits in locations near schools, youth centres and residential institutions for vulnerable people, including children's care homes and hostels for the homeless.*

##### Justification and clarification

The protection of children and vulnerable people from gambling is a key objective of this policy. Vulnerable people are those persons who gamble more than they want to, persons who gamble beyond their means and persons who may not be able to make informed or balanced decisions about gambling perhaps due to a mental impairment, alcohol or drugs.

This component of the policy is in keeping with the prevailing gambling legislation in Great Britain, where Councils have embodied it as a core objective of their licensing policies, and is in line with similar legislative proposals being considered by the Department for Social Development (Northern Ireland) and the Department of Justice & Law Reform in the Republic of Ireland.

While the Council acknowledges that amusement arcades restrict admittance to underage persons and that the 1985 Order does not specifically refer to the need to consider the effects on persons attending schools or youth clubs, the Council believes that a precautionary approach is required for applications made near locations where children, young persons and vulnerable



people congregate. Accordingly, the Council will not permit amusement arcades within 200metres of a school, youth centre or a residential institution. This distance has regard to regional planning policy guidance, which recognises it as '*a location within easy walking distance*'.

## Conclusion

Overall, this policy is intended to strike a balance between safeguarding the concerns of the wider public on the one hand and respecting an applicant's desire to obtain an amusement permit on the other. From an operational perspective, it is hoped that the policy will help to clarify the Council's position on amusement permit applications and allow for greater coherence and consistency in decision-making.

The Council has broad discretion in the range of matters it may consider in the determination of applications. This policy establishes, for all interested parties, the matters which are likely to be taken into consideration. This does not prevent the Council from departing from this policy where it is appropriate to do so.



## Appendix A

### Guidance for premises (as per 1985 Order & amendments thereof)

In terms of the actual premises used wholly or mainly for the provision of amusements by gaming machines, Belfast City Council has powers, under Article 111, paragraph 6b of the 1985 Order, to specify:

- how premises are illuminated;
- the form of advertising and window display; and
- how notices are displayed on the premises.

Addressing each of the above matters in turn, the following points should be noted by applicants:

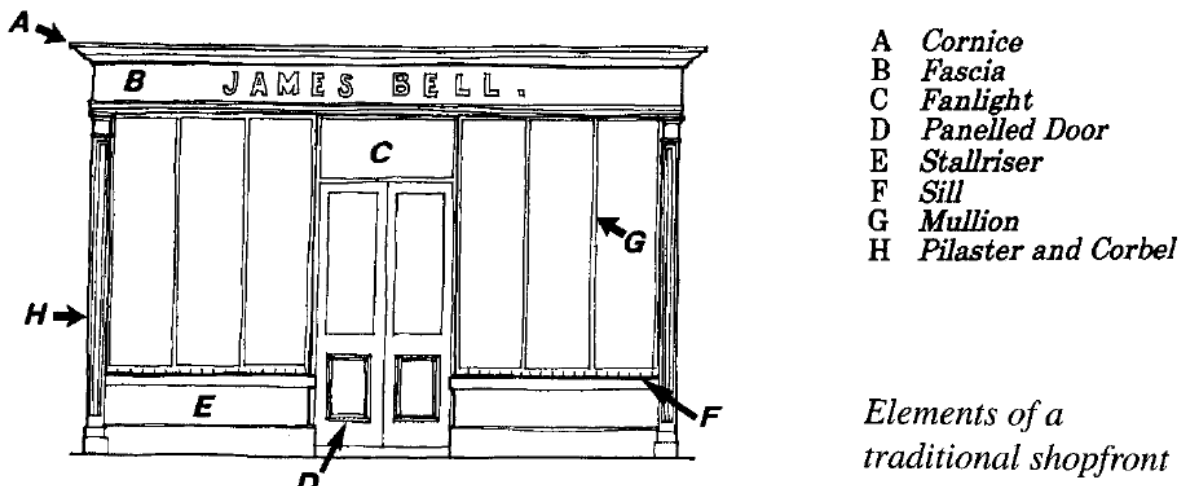
- **Illumination** – as a general rule illumination should be kept to a minimum and no floodlighting of premises will be permitted, save for trough/spot lighting over the fascia.
- **Form of advertising and window displays** – the name of the business should be clearly advertised in the window. Legislation in Northern Ireland restricts access to higher prize machines by people under eighteen. Notification of this restriction should be clearly displayed on the exterior of the premises and ideally a proof-of-age scheme should be implemented by the operator. The windows should be designed so as to shield the interior (and machines) from public view. This could involve the use of fixed screening inside the windows, opaque fenestration or a combination of both. Projecting signs that advertise the presence of the establishment are not considered suitable for amusement arcades.
- **Notices on premises** - advertising in amusement arcades should be legal, socially responsible and not construed to exploit or specifically target the young and other vulnerable persons through style, presentation or content. Interior notices indicating that access is prohibited to persons aged under eighteen should be prominently



displayed. Notices containing helpline numbers for organisations such as GamCare, Gamblers Anonymous, Gambleaware, etc. should also be displayed within the premises. Applicants may also wish to consider providing information leaflets with helpline numbers near gaming machines.

Guidance on the content of Notices is available in the rule book known as the Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the Code). The Committee of Advertising Practice (CAP) is the self-regulatory body that creates and enforces this Code. The latest version of the CAP CODE is available online at <http://www. www.cap.org.uk/Advertising-Codes/Non-broadcast-HTML.aspx>

The requirement to regulate illumination, advertising and window displays on an amusement arcade has to be balanced against a wider planning desire to avoid the creation of an unsightly facade that could undermine the visual amenity of the streetscape. Therefore, in order to promote their integration, some policies in Britain cite the need for amusement arcades to respect elements of the traditional shop-front design (see illustration below).



Reference to the traditional shop-front design is intended to alert applicants to the key features of a retail façade. It is submitted as information only and is not intended to be read as a rigid template for the frontage design of premises.



## Appendix B Police Questionnaire

### The Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (as amended)

In accordance with the above legislation, relating to Amusement Permits, the Police Service of Northern Ireland (PSNI) is duly requested to give its considered opinion in respect of the fitness of the applicant to hold an amusement permit and the location of the application premises.

**Applicant details:**

**Premises' details:**

Application for Amusement Permit (including renewal of Permits)				
Question	Y	N	Don't Know	If 'Y' please provide details including dates
Has the applicant ever been convicted of a criminal offence?				
Has the Police ever received complaints about the applicant or premises?				
Has the Police ever been called to intervene in disturbances in the vicinity of the premises?				
Has the Police ever objected to an amusement permit application for these premises in the past, or to an application made by the same applicant elsewhere?				
Overall, does the Police have any objections to this applicant being granted an amusement permit?				
Overall, in the opinion of the Police, is the location of the premises considered suitable for an amusement arcade? For example its suitability in terms of its proximity to residential institutions that are used for bail or probation purposes.				If 'N' please give reasons





## Appendix C: Belfast City Centre Retail Core







**Appendix D: Definition of a shop**  
**- extract from The Planning (Use Classes) Order (Northern Ireland) 2004**

SCHEDULE

PART A

SHOPPING AND FINANCIAL & PROFESSIONAL SERVICES

*Class A1: Shops*

Use for all or any of the following purposes –

- (a) for the retail sale of goods other than hot food;
- (b) as a post office;
- (c) for the sale of tickets or as a travel agency;
- (d) for hairdressing;
- (e) for the display of goods for retail sale;
- (f) for the hiring out of domestic or personal goods or articles; or
- (g) for the reception of goods including clothes or fabrics to be washed, cleaned or repaired either on or off the premises

where the sale, display or service is to visiting members of the public.

## Amusement Permit Policy

The policy was ratified by Belfast City Council on 1 May 2013.

**Building Control Service**  
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Belfast City Council  
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Additional copies available on request or from our webpage.

Copies are also available in alternative formats on request from our Building Control Service.



Subject:	Application for the Provisional Grant of an Amusement Permit at 73-75 North Street
Date:	17 August 2022
Reporting Officer:	Stephen Hewitt, Building Control Manager, Ext: 2435
Contact Officer:	Laura Hillis, Principal Control Surveyor, Ext: 2469

<b>Restricted Reports</b>	
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"/>

<b>Call-in</b>	
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	<p>To consider an application for the provisional grant of an Amusement Permit under the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (the Order).</p> <table><tr><td><b>Premises and Location</b></td><td><b>Ref. No.</b></td><td><b>Applicant</b></td></tr><tr><td>Oasis Gaming 73-75 North Street Belfast, BT1 1NL</td><td>WK/202200407</td><td>Oasis Retail Services Limited Oasis House, Mallusk Drive Newtownabbey, BT36 4GX</td></tr></table>	<b>Premises and Location</b>	<b>Ref. No.</b>	<b>Applicant</b>	Oasis Gaming 73-75 North Street Belfast, BT1 1NL	WK/202200407	Oasis Retail Services Limited Oasis House, Mallusk Drive Newtownabbey, BT36 4GX
<b>Premises and Location</b>	<b>Ref. No.</b>	<b>Applicant</b>					
Oasis Gaming 73-75 North Street Belfast, BT1 1NL	WK/202200407	Oasis Retail Services Limited Oasis House, Mallusk Drive Newtownabbey, BT36 4GX					
1.2	<p>The Directors of Oasis Retail Services Limited are Gerard Steinberg and Martin Trimble. The applicant company has operated an existing amusement arcade at 19 North Street, for over 15 years, which is proposed to be relocated to the application premises.</p>						
1.3	<p>A location map is attached as Appendix 1.</p>						

1.4	Layout plans of the premises are attached as Appendix 2.
<b>2.0</b>	<b>Recommendations</b>
2.1	<p>In considering the application for the Provisional Grant of an Amusement Permit, the Committee shall have regard to the Order and Belfast City Council's Amusement Permit Policy, as follows:</p> <ul style="list-style-type: none"> <li>a) The fitness of the applicant to hold a Permit having regard to his character, reputation and financial standing, and</li> <li>b) The fitness of any other person by whom the business is to be carried on under the Permit would be managed, or for whose benefit that business would be carried on,</li> <li>c) In considering the fitness of a body corporate to hold an amusement permit, the Council shall also have regard to the character, reputation and financial standing of the directors of the body corporate and any other persons who have executive control of it and who have a financial interest in it, as if the permit were, or were proposed to be, held by them jointly,</li> <li>d) Representation, if any, from the sub-divisional commander of the Police Service of Northern Ireland in whose sub-division the premises are situated, and</li> <li>e) Representation, if any, as a result of the public notices of advertisement.</li> </ul> <p>You are then required to make a decision based on the following options set out under the Order.</p> <p>You must refuse the application unless satisfied that:</p> <ul style="list-style-type: none"> <li>a) The applicant is a fit person to hold an Amusement Permit; and</li> <li>b) The applicant will not allow the business proposed to be carried on under the Amusement Permit to be managed by, or carried on for the benefit of, a person other than the applicant who would himself be refused the grant of an Amusement Permit.</li> </ul> <p>Thereafter:-</p> <ul style="list-style-type: none"> <li>1) You may refuse the application after hearing any representations from third parties, or</li> <li>2) You may grant the application, subject to the mandatory condition that the premises are not to be used for an unlawful purpose or as a resort of persons of known bad character, and</li> <li>3) You may also grant the application subject to discretionary conditions outlined in the Order relating to the illumination of the premises, advertising of, and window displays on the premises and the display of information notices.</li> </ul>
2.2	<p>Should you be minded to refuse the application for the Provisional Grant of an Amusement Permit, or grant the Permit, subject to any discretionary conditions, you are required to advise the applicant of your intention to do so and you must afford the applicant the opportunity to make representations at a specified Licensing Committee meeting on the matter before making a final determination on the application.</p>

2.3	If, upon hearing the applicant, you refuse the application for the Provisional Grant of an Amusement Permit or decide to grant the application subject to discretionary conditions, the applicant may within 21 days from the date on which notice of the decision is served on him, appeal to the county court.
<b>3.0</b>	<b>Background</b>
	<p><b><u>Key Issues</u></b></p> <p>3.1 Members are reminded that the Licensing Committee is responsible for determining all applications relating to the grant of Amusement Permits.</p> <p><u>Provisional grant of an Amusement Permit</u></p> <p>3.2 There is scope within the Order to make application for the provisional grant of an amusement permit in respect of premises which are about to be, or are in the course of being, constructed, extended or altered.</p> <p>3.3 If the Council is satisfied that the premises would, if completed in accordance with plans deposited, be such that it would grant the permit, the Council may grant a provisional amusement permit. However, a provisional permit does not authorise the use of gaming machines until the permit is declared final.</p> <p>3.4 The Order stipulates that the Council, upon application by the permit holder, must declare the permit final when it is satisfied that the premises have been completed in accordance with the plans deposited with the council.</p> <p>3.5 Should Members be of a mind to grant the permit provisionally, Committee is requested to consider delegating authority to the Director of Planning and Building Control in consultation with the City Solicitor to issue the permit once all necessary technical requirements relating to health, safety, welfare and amenity have been completed to the satisfaction of the Building Control Service.</p> <p><u>Application details</u></p> <p>3.6 The application is for a total of 85 gaming machines, which represents a decrease of 15 machines from the existing arcade's 100 machines. All are to pay out a maximum all cash prize of £25.00. Admission is restricted to persons aged 18 or over.</p> <p>3.7 The proposed opening hours of the premises, as specified on the application, are:</p> <p style="padding-left: 40px;">Monday to Sunday: 9.00 am to 12.00 midnight</p> <p><b><u>Representation - NIFRS</u></b></p> <p>3.8 The Northern Ireland Fire and Rescue Service has been consulted and confirmed that they have no objections to the application.</p> <p><b><u>Applicant</u></b></p> <p>3.9 A representative from Oasis Retail Service Ltd and from their Planning Consultant MBA Planning will be available to discuss any matters relating to the grant of the permit at your meeting.</p> <p>3.10 The applicant's supporting statement document is attached as Appendix 3.</p>

<p>3.11</p> <p>3.12</p> <p>3.13</p> <p>3.14</p> <p>3.15</p>	<p><b><u>Planning matters</u></b></p> <p>Planning permission for change of use from retail to amusement arcade and alterations to shop front was granted on the 21 April 2022.</p> <p>It is noted that the application relates to the relocation of an existing amusement arcade at 19 North Street, the necessity for which is linked to a wider regeneration initiative for this north-eastern part of the City Centre. To this end, the grant of planning permission for the amusement arcade at No.73-75 North Street (Ref: LA04/2018/0098/F) was subject to a legal agreement whereby the existing amusement arcade at 19 North Street must close once this proposed arcade becomes operational.</p> <p>In an important Court of Appeal decision in June 1999, it was confirmed that the Council, in determining applications for Amusement Permits, may take into account planning considerations but should be slow to differ from the views of the Planning Authority.</p> <p>The Court also confirmed that the Council can take into account matters such as location, structure, character and impact on neighbours and the surrounding area.</p> <p>A copy of the planning permission is attached as Appendix 4.</p>
<p>4.0</p>	<p><b><u>Key issues</u></b></p>
<p>4.1</p> <p>4.2</p> <p>4.3</p>	<p><b><u>Amusement Permit Policy</u></b></p> <p>The Belfast City Council Amusement Permit Policy, ratified at Council on 1 May 2013, outlines those matters which may be taken into account in determining any amusement permit application and indicates that each application must be assessed on its own merits.</p> <p>All applications for the provisional grant or grant of an amusement permit are assessed against the Amusement Permit Policy.</p> <p>The key objectives of this policy are to:-</p> <ol style="list-style-type: none"> <li>1. Promote the retail vibrancy and regeneration of Belfast;</li> <li>2. Enhance the tourism and cultural appeal of Belfast by protecting its image and built heritage;</li> <li>3. Support and safeguard residential communities in Belfast;</li> <li>4. Protect children and vulnerable persons from being harmed or exploited by gambling;</li> <li>5. Respect the need to prevent gambling from being a source of crime and disorder.</li> </ol> <p>The Policy consists of two components which are considered below:</p> <p><b><u>1. Legal requirements under the 1985 Order</u></b></p> <p>Members must have regard to the legal requirements under the 1985 Order relating to:</p> <p><b>(a) The character, reputation and financial standing of the applicant:</b> References and additional supporting information for those associated with the application are attached as Appendix 5 to the report for consideration.</p> <p><b>(b) The nature of the premises and activity proposed:</b> To ensure that the nature of the premises proposed is suitable for this location Members may consider how the premises are</p>

4.4	<p>illuminated, the form of advertising and window display, and how notices are displayed on the premises. Whilst the appearance of amusement arcades is considered a Planning matter, Members may still wish to be satisfied that the facade integrates with adjacent frontages.</p> <p><b>(c) Opinions of the Police:</b> The Police Service of Northern Ireland has been consulted and confirmed that they have no objections to the application. A copy of the correspondence is attached as Appendix 6.</p> <p><b>(d) Submissions from the general public:</b> No objections have been received as a result of the public notices placed in the three local newspapers.</p> <p><b><u>2. Assessment criteria for suitability of a location</u></b></p> <p>There are five criteria set out in the Policy which should typically be considered when assessing the suitability of a location for an amusement arcade. These are detailed below as they relate to this application.</p> <p><b>(a) Retail vibrancy and viability of Belfast:</b></p> <p>This application involves the relocation of an existing amusement arcade at 19 North Street to 73-75 North Street, circa 150m away. The application site is a vacant retail unit, formerly occupied by Bannon's home furnishings.</p> <p>The application premises are situated within the Belfast City Centre Retail Core as defined in the draft Belfast Metropolitan Area Plan 2015 (dBMAP). It is bordered on one side by another vacant retail unit formerly occupied by the 'Money Shop' while on its other side several cycle stands are in place. The proposal is not considered to break up a continuous shopping frontage.</p> <p>The Council's Permit Policy indicates that, outside of renewal applications, there is a presumption against granting permits for amusement arcades in the Retail Core of Belfast unless they are related to a major, retail-led, mixed use development or an upper storey development. It is noted that the application relates to the relocation of an existing amusement arcade at 19 North Street, the necessity for which is linked to a wider regeneration initiative for this north-eastern part of the City Centre. To this end, the grant of planning permission for the amusement arcade at No.73-75 North Street (Ref: LA04/2018/0098/F) was subject to a legal agreement whereby the existing amusement arcade at 19 North Street must close once this proposed arcade becomes operational.</p> <p><b>(b) Cumulative build-up of amusement arcades in a particular location:</b></p> <p>In addition to the existing Oasis Gaming Centre arcade at 19 North Street, which this application at No.73-75 North Street seeks to replace, there is another amusement arcade located at 13 North Street (Twilight Zone). In the desire to promote retailing in the City Centre the Council is keen to avoid a clustering of such uses at a given location. Whilst the proposed arcade at 73-75 North Street may be in the general vicinity of the existing premises at 13 North Street (Twilight Zone) it is not located on the same commercial frontage as it.</p> <p><b>(c) Impact on the image and profile of Belfast:</b></p> <p>The application premises are located next to two listed corner buildings that define the corner of lower North Street with Royal Avenue. The premises are also located in a Conservation Area. While these listed buildings contribute to the historic fabric of Belfast</p>
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	<p>City Centre they are not considered tourism assets, which could be undermined by the opening of this amusement arcade.</p> <p>(d) Proximity to residential use:</p> <p>The Permit Policy states that permits will not be granted in areas that are (i) predominantly residential in character nor will they be granted in (ii) non-residential property that is immediately adjacent to residential property.</p> <p>(i) - predominantly residential in character:</p> <p>The application premises are located at ground-floor level, along the commercial frontage of North Street. North Street is located within the Retail Core, and this area can therefore be viewed as one that is not predominantly residential in character.</p> <p>(ii) – non-residential property that is immediately adjacent to residential property:</p> <p>There are no residential properties immediately adjacent to the premises.</p> <p>(e) Proximity to schools, youth centres, and residential institutions for vulnerable people:</p> <p>There are no schools, youth centres, or residential institutions for vulnerable people within 200m of the application premises.</p> <p><u>Conclusion</u></p>
4.5	The application premises are in the Retail Core of Belfast City Centre and the Amusement Permit Policy has a presumption against permitting amusement centres to open in the Retail Core. However, the Permit Policy does state that an exception can be made for applications which are for renewals or part of a major, retail-led mixed-use development.
4.6	This application seeks to relocate an existing amusement arcade 150m closer to Royal Avenue, the relocation of which will help facilitate the assembly of property for the regeneration of the north-eastern quarter of the City Centre.
4.7	This requirement to relocate the amusement centre to facilitate regeneration, and the requirement of the planning permission to close the existing amusement arcade at 19 North Street once this proposed arcade becomes operational, are factors the Licensing Committee may wish to consider in the determination of this permit application.
4.8	A copy of the Council's Amusement Permit Policy is attached for your information and reference as Appendix 7.
5.1	<p><b><u>Financial &amp; Resource Implications</u></b></p> <p>Administration of Amusement Permit applications is included in current budgetary estimates.</p>
6.1	<p><b><u>Equality or Good Relations Implications/Rural Needs Assessment</u></b></p> <p>None.</p>



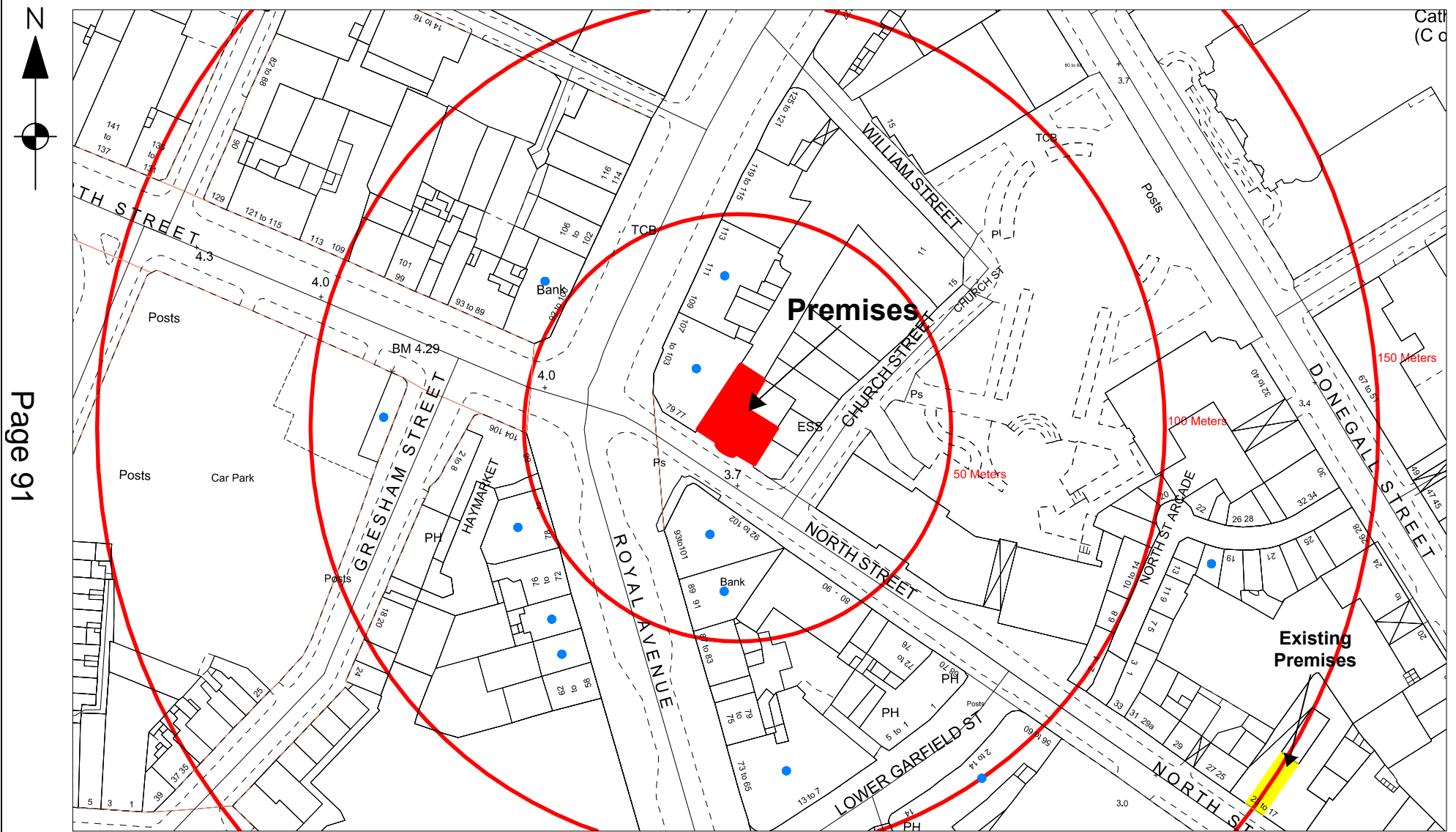
7.0	<b>Appendices – Documents Attached</b> <ul style="list-style-type: none"> <li>• Appendix 1 – Location Map</li> <li>• Appendix 2 – Layout plan of the premises</li> <li>• Appendix 3 – Supporting Statement document</li> <li>• Appendix 4 - Copy of the Planning Permission</li> <li>• Appendix 5– References</li> <li>• Appendix 6 – PSNI Correspondence</li> <li>• Appendix 7 – Belfast City Council’s Amusement Permit Policy</li> </ul>
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# Building Control Service

Belfast Mapping Data v3.0  
Prepared by I.S.B.  
Based upon the Ordnance Survey  
Of Northern Ireland map with the  
permission of the Director & Chief Executive  
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Page 91

 Listed Building

DRAWN BY	M Treacy
DATE	08/08/2022

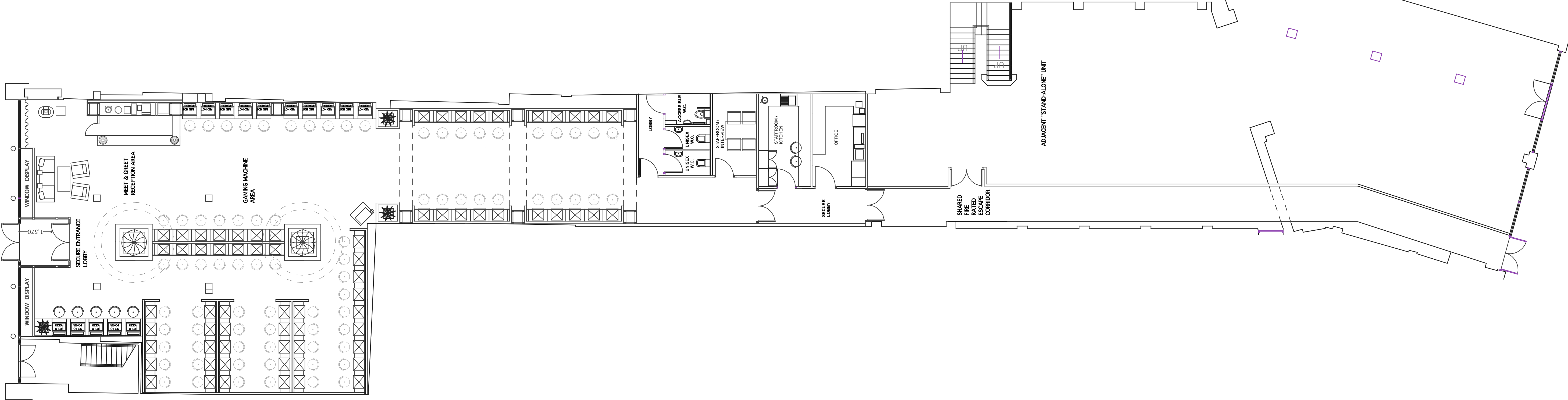
Oasis Gaming  
73-75 North Street

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PROPOSED FRONTAGE AND SECTION



project » OASIS NORTH ST

title » PLAN & FRONTAGE

client » OASIS RS LTD

scale » 1:100 & 1:50

date » MARCH 2021

dwg no » IDA.12/613.09

Contractor to confirm all dimensions on site and to report any discrepancies to designers

All works to comply with current statutory legislation

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# SUPPORTING STATEMENT

Relocation of Amusement Permit

19 North Street to 73-75 North Street, Belfast

Oasis Retail Services Limited

May 2022

**MBA** Planning

## 1.0 INTRODUCTION

1. This statement assesses an application by Oasis Retail Services ('Oasis') for the provisional grant of an amusement permit on the front part of a former retail unit at 73 – 75 North Street, Belfast.
2. The application seeks consent to use the premises wholly for the provision of gaming machines with a maximum all cash prize of £25 as defined by Article 108 (1)(ca) of the Betting, Gaming, Lotteries and Amusements (NI) Order 1985 (hereinafter 'The 1985 Order').
3. Oasis' long-established premises at 19 North Street which has operated as an amusement arcade for more than 45 years will close (**Appendix 1**).
4. That building will be substantially demolished to facilitate the comprehensive redevelopment and regeneration of this area through the proposed scheme formerly known as 'Royal Exchange' now known as 'Tribeca'.
5. It means this proposal is essentially a relocation of the long-established amusement arcade use to a new site about 150m away. The existing use of No 19 will be extinguished by way of a planning agreement between Oasis, their current and prospective landlord and the Council (**Appendix 2**).



Figure 1: The North Street Context



6. The statement is structured in the following way:
- I explain the background to the proposal in **Section 2.0**;
  - I describe the location of the proposal in **Section 3.0**;
  - I assess the relevant issues in **Section 4.0**;
  - I set out the principal conclusions in **Section 5.0**.
7. It is accompanied by the following plans and appendices:
- **Appendix 1:** Historical Permit for No 19 North Street;
  - **Appendix 2:** The Planning Agreement;
  - **Appendix 3:** Typical Interior of an Oasis Premises;
  - **Appendix 4:** Previous Judgements: 7 Wellington Place and Richmond Centre;
  - **Appendix 5:** PAC Decision for 7 Wellington Place, Belfast;
  - **Appendix 6:** Business Tenancy Notice;
  - **Appendix 7:** Planning Approval;
  - **Appendix 8:** Planning Case Officer's Report and Building Control Officer's response;
  - **Appendix 9:** Hazeldene Enterprises Court of Appeal Decision;
  - **Appendix 10:** Environmental Health Officer's Consultation Response.

## **2.0 BACKGROUND TO THE PROPOSAL**

8. Oasis is an established amusement/ gaming centre operator that was formed in 1968 but has now expanded into a significant enterprise employing in the region of 140 people.
9. The business is wholly owned and operated in Northern Ireland. It currently holds 15 amusement permits.
10. Their current premises in North Street was one of its first facilities. It has been in existence on the site for more than 45 years.
11. Since then, Oasis has traded successfully at this location. No issues have arisen in respect of its compliance with the 1985 Order and particularly age control. The applicant is not aware of any complaints whatsoever regarding any element of its operation. Its permit has been renewed annually, most recently in June 2021.

12. For more than 50 years, Oasis has been at the forefront of raising standards within the local Gaming industry. In particular they have confronted the 'stigma' associated with Gaming Centres that have often been characterised by mis-management and poor presentation by offering a genuine alternative.
13. As a result, Oasis business model is to operate high quality, well managed gaming centres in high street locations. Units are fitted out to exceptional standards.
14. Oasis is dedicated to the promotion of 'Responsible Gambling' and train all management in social responsibility measures including age control and effective self-exclusion policies. All of this seeks to provide the best levels of customer experience and care.
15. While entrance is restricted to over 18s only, Oasis applies a 'Think 21' policy in relation to age control of their customers. This will apply to all the proposed floorspace.
16. The premises and offering are deliberately designed to cater for a mature customer. This creates an adult leisure environment that co-exists and complements other neighbouring businesses **(Appendix 3)**.
17. Its offer is distinct (compared to the majority of other amusement arcades) and a material consideration that the Courts have had particular regard to in the determination of previous Oasis permit applications at Wellington Place in Belfast and the Richmond Centre in Londonderry **(Appendix 4)**.
18. The Planning Appeals Commission (PAC) has also had regard to Oasis' position at the '*quality end of the amusement centre business*' as a reason why it would require '*a quality location*' in the determination of the planning appeal into what would become the Wellington Place premises in Belfast City Centre **(Appendix 5)**.
19. In line with its desire to improve its customer offer and experience at North Street, planning permission was sought in 1998 to extend the unit into the adjacent retail premises at No 21. This received planning permission in September 2000.

20. However, those modernisation and expansion plans were abandoned when Ewarts announced their intentions to comprehensively redevelop this part of Belfast (the forerunner of the scheme that would eventually become Royal Exchange and latterly Tribeca).
21. As an interim measure, Oasis refurbished their existing unit in or about 2004.
22. Oasis has now been served with a notice to vacate this unit under the Business Tenancy Order by the new landowner – Castlebrook Investments or Project Goat Ltd (**Appendix 6**). This is to enable them to proceed with their development ambitions for the regeneration of this area.
23. Castlebrook has told Oasis that they must vacate their unit as soon as possible.
24. An application for planning permission to relocate the business to the proposal site was made in December 2017. The recommendation to approve planning permission was accepted by the Town Planning Committee in April 2018, subject to a legal agreement to extinguish the gaming centre use at their existing unit.
25. Planning permission was eventually granted by Belfast City Council on 21 April 2022. (**Appendix 7**). The long delay has been caused by extensive negotiations to settle the terms of the planning agreement between Castlebrook, the prospective landlord and the applicant.
26. No letters of objection were received in response to the planning application, from any member of the public or other commercial interest.
27. The permit application has, therefore, been made to facilitate the orderly relocation of Oasis' established business to a unit in close proximity.
28. The proposed unit contains a floorspace of 368sqm. In addition to the area for gaming, there will also be a lounge/ relaxation area, coffee making facilities, kitchen, ancillary office space, staff rooms and toilet provision. It will have a single customer access onto North Street and will be fully accessible for disabled members of the public.

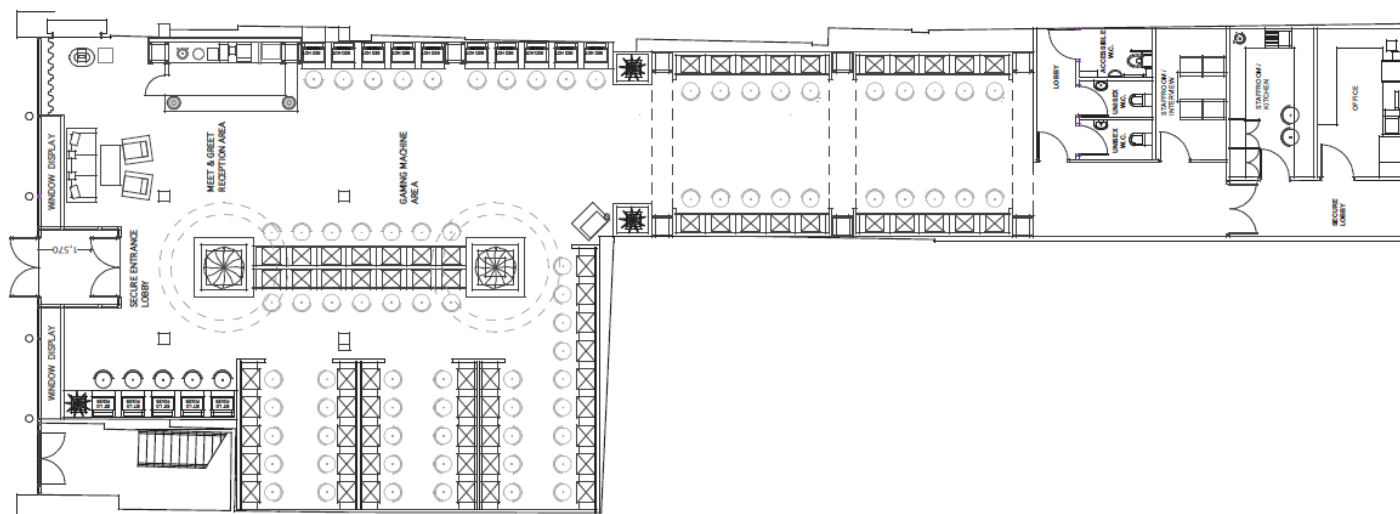


Figure 2: Indicative Floorplan

29. Shopfront alterations are also proposed to the building but these will be sympathetic to ensure they integrate and blend seamlessly into the existing streetscape. They comprise a painted hardwood shopfront with decorative hardwood doors, sidelights, columns and fascia panel.



Figure 3: The alterations to the shopfront

30. It is anticipated that the premises will operate seven days a week between the hours of 9am and midnight on Monday to Saturday and 11.30am to midnight on Sunday.
31. The proposal represents an additional investment of over £500,000 into the area and will secure jobs for the ten members of staff who are currently employed at Oasis' existing premises.

### 3.0 THE LOCATION

32. North Street is within the North East Quarter of the City Centre. It consists of a one-way street for vehicular traffic and runs between the junction of Bridge Street and Royal Avenue with on street parking.
33. The North East Quarter is one of the most historical parts of the City and functioned as the commercial core during the 17<sup>th</sup> and 18<sup>th</sup> centuries. By the 19<sup>th</sup> century, the planned growth and shifting of the City's commercial focus to centre on Royal Avenue relegated this area's importance and its retail attraction suffered as a result.
34. By the 1970s, the physical character began to deteriorate as its retail importance declined as a consequence of poor global economic conditions, the rise in popularity of out-of-town shopping and the IRA's sustained bombing campaign that left many buildings derelict or completely destroyed.
35. Those factors were widely acknowledged and efforts to reverse these trends included the introduction of the Urban Development Grant in 1983 to encourage investment and the publication of the Belfast Urban Area Plan in 1989 that identified a series of regeneration proposals for the City Centre.
36. North Street was one area that was recognised as specifically requiring investment. While there have been a number of schemes proposed for the area since 2000, none have materialised.
37. It means the principal characteristic of this area is of run-down tertiary retail and service use appearance. It has suffered from years of decline and underinvestment, resulting in a significant drop off in retail uses from primary or premier retail pitch at Royal Avenue to service uses within only a few metres.
38. Despite these characteristics, the draft Belfast Metropolitan Area Plan (dBMAP) proposes that this area should be included within the Prime Retail Core (PRC) under **BMAP Designation**

**CC05.** dBMAP indicates that it is designated to ensure the continuance of a compact and attractive shopping environment, offering both choice and convenience.

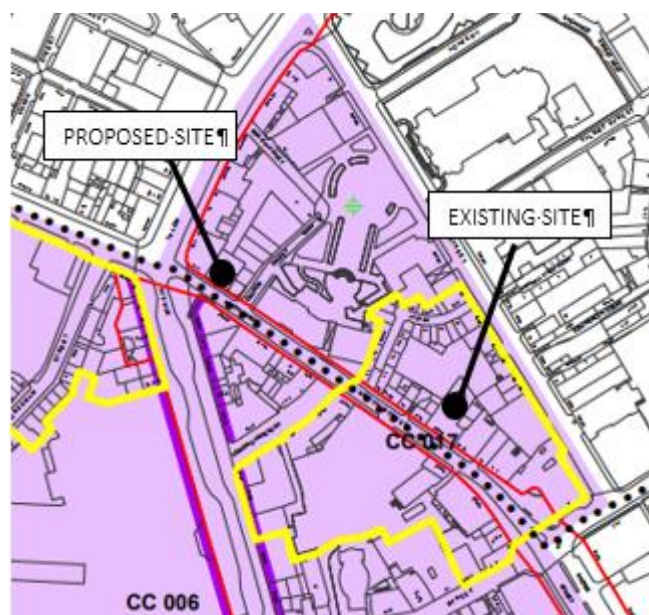


Figure 4: Extract from dBMAP

39. The area contained within the PRC is broadly consistent with the Main Shopping Area (MSA) that was defined in the Belfast Urban Area Plan (BUAP) 2001 – the statutorily adopted area plan for Belfast following the Court of Appeal’s judgement that the decision to adopt BMAP was not lawful.
40. The existing Oasis premises is also proposed for inclusion within the boundary of a Development Opportunity Site known as Cathedral Way (**BMAP Proposal CC017**).
41. While it has no statutory force and is not taken into account for the purposes of determining planning applications, the draft plan strategy for Belfast (dPS) (which is currently at post public examination stage), gives a general indication of the way planning policy might develop for this area.
42. **dPS Para 8.2.1** indicates that the Strategy is creative and permissive to adapt to changing trends and promote resiliency whilst maintaining the function of core areas for retailing. It says it will build upon complementary creative and cultural uses and enable its evening and night time economy to grow and diversify.

43. Its policy is focused on promoting the sustainable growth, and facilitating mixed use regeneration schemes within the city centre character areas to strengthen and diversify the overall offer of Belfast (**dPS Para 8.3.4**).
44. The application building is at the north western end of North Street close to its junction with Royal Avenue. It is a three-storey brick and stone building built in the early 1990s. Its architecture is of its time and is an unremarkable modern building.

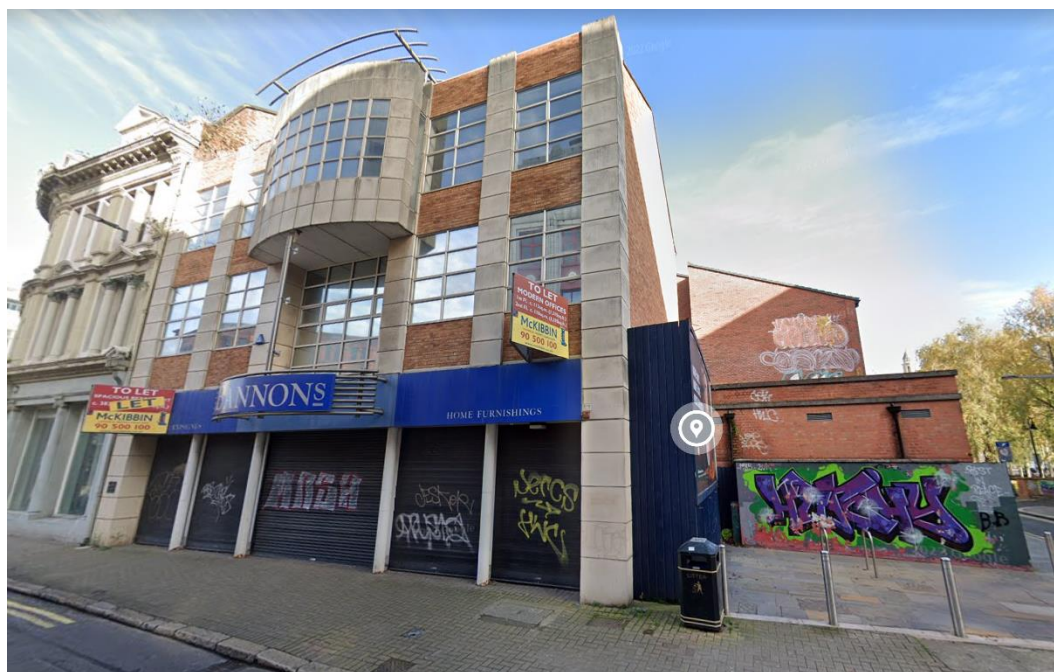


Figure 5: The Application Building

45. It was last used as a furniture showroom until December 2015 when it closed citing depleting sales over the last 15 years as the main reason. Eleven jobs were lost as a result.
46. The premises have remained vacant since then with no interest from any other retailer. The building has now been subdivided and a new ground floor unit has been created facing onto William Street.
47. The building sits as a single block in the street and is bounded by a gap site adjacent to Church Street. It is beside a vacant unit that was last used by The Money Shop (although the frontage of that building and point of public access is onto Royal Avenue).

48. The building is not listed and has no heritage interest despite its location within the Cathedral Conservation Area.

#### 4.0 ISSUES FOR CONSIDERATION

49. The Belfast City Council Amusement Permit Policy (BCCAPP) was published in May 2013 and so postdates the grant of the existing amusement permit at No 19 North Street.
50. BCCAPP identifies six matters:
- Whether the proposal is appropriate for the location;
  - Impact on the retail vitality and viability of Belfast City;
  - Cumulative build-up of amusement arcades in a particular location;
  - Impact on the image and profile of Belfast;
  - Proximity to residential use; and
  - Proximity to schools, youth centres and residential institutions for vulnerable people.
51. Many of these issues overlap with planning considerations and it is instructive to consider the Planning Authority's assessment of the planning application in addition to the planning policy framework for that decision. In line with this, BCCAPP page 2 indicates that the Council should be slow to differ from the views of the Planning Authority.
52. BCCAPP page 3 notes that the policy is framed to be broadly consistent with regional planning guidance on amusement arcades but it is tailored to take into account considerations specific to Belfast including the *'location of existing amusement arcades in the City'*.
53. As noted above, this is not an application for a new amusement arcade. It is the relocation of an established facility that has been necessitated through the Business Tenancy Order as a result of the Tribeca scheme coming forward.
54. Thus, for the purposes of the BCCAPP, its presence as an *'existing amusement arcade in the City'* is a significant material consideration, the existence of which, is an important fall-back position that should be taken into account in the assessment of this application.



55. The amusement centre at No 19 North Street is therefore, a very established part of the street frontage in this part of the City Centre. There is no evidence to suggest that its operation or existence has had any harmful impact on the shopping or retail function of the street.



Figure 6: Oasis' Existing Premises

56. The planning agreement aims to facilitate the relocation of the amusement arcade/ gaming centre from this property (property A) to the proposal site (property B). It expressly states *'that the existing arcade at property A does not at any time operate concurrently with any part of property B as an amusement arcade/ gaming centre'*.
57. That proposed relocation is also in line with the emerging **dPS Policy TLC 2** which deals with existing leisure facilities. It says that the Council will protect existing leisure provision from being adversely affected (from) new development. The policy provides that the loss of these facilities be considered acceptable in certain exceptional circumstances (amongst these) that similar or better replacement is made elsewhere within the same catchment area, which is readily accessible by public transport, pedestrians and cyclists.
58. The justification and amplification makes it clear that existing leisure facilities should be protected from pressure for new development. The intention is to ensure that if alternative development is proposed that replacement provision is made to maintain the choice of facilities available in the plan area to maximise visitor numbers and spend.
59. The proposed relocation is entirely consistent with this emerging direction of planning policy.

60. Further the existing amusement permit predates the publication of both DCAN1 and the designation of the Cathedral Conservation Area.
61. It means that the relocation will have no more harmful impact on the Conservation Area compared to the existing situation. In fact, the proposal will have a positive impact by bringing into beneficial use, an otherwise long-term redundant building within this area.
62. It follows that the proposal site is an entirely suitable location and the use is appropriate in the area.

### **Impact on the retail vitality and viability of Belfast City**

63. BCCAPP criterion 1 says an application for an amusement permit in Belfast City Centre's prime retail core will only be granted if it is:
- A renewal of an existing amusement permit; or
  - Part of a major, retail-led mixed-use development; or
  - An upper storey development.
64. It also says that an amusement permit will not be granted where it would break up an otherwise continuous shopping frontage.
65. The amplification text explains the rationale is to promote retail vibrancy and regeneration of Belfast. It says that encouraging retailing in the retail core is in accordance with retail planning policy in **PPS5 paragraphs 11 and 25**.
66. Criterion one was considered by the Building Control Officer in his consultation response to the planning application (**Appendix 8**). This asserted the proposal did not comply with the criterion.
67. In more detail:
- 'The application involves the relocation of an existing amusement arcade on the same street, from 19 North Street to 73 – 75 North Street. The application site is a vacant retail unit, formerly occupied by Bannon's home furnishings.'*

*The application premises are situated within the Belfast City Centre Retail Core as defined in the draft Belfast Metropolitan Area Plan 2015 (dBMAP). It is bordered on one side by an entrance to first floor offices and on the other by the 'Money Shop'. The proposal would not therefore break up a continuous shopping frontage.*

*However, the Council's Permit Policy indicates that, outside of renewal applications, there is a presumption against granting permits for amusement arcades in the Retail Core unless they are related to a major, retail-led mixed-use development or an upper storey development. Viewed in this context the application runs contrary to the Council's Amusement Permit Policy.*

68. Since BCCAPP was published, the SPPS has superseded the retail policies of PPS5. The SPPS introduces a general 'town centre first' approach to all main town centre uses (that are not confined to just retail). This means that leisure and entertainment uses (and so amusement arcades) are now also encouraged and promoted in town and city centres.
69. In line with this **SPPS para 6.280** introduces a sequential test and requires planning authorities to consider applications for main town centre uses (such as leisure and entertainment uses) in the following order of preference: primary retail core, town centres, edge of centre; and out of centre locations only where sites are accessible by a choice of good public transport modes.
70. This shift in regional policy (that expands the role of town and city centres compared to the narrow role that was envisaged by PPS5) was not known at the time BCCAPP was drafted. It follows that criterion 1 would now be inconsistent with regional policy.
71. This shift in regional policy is however picked up by the **dPS Policy RET5** which deals with Primary Retail Areas and recognises that to support and sustain the centre's long-term viability is unlikely to depend on retail use alone. As a result, it increases the amount of floorspace that can be used for non-retail purposes within these areas.
72. The justification and amplification at **dPS Para 8.2.26** says that '*this policy seeks to enhance the diversity, quality and viability of offering in the city ... by managing the retail and non-retail uses so that less than 40% are in non retail use, the policy provides flexibility for diversity of*

*use to supplement retailing provision with leisure, hospitality and entertainment and support the evening and night-time economy’.*

73. However, notwithstanding this, the relocation can be considered as part of a major, retail led mixed use development because the vacation of the existing unit will assist in the facilitation and realisation of the Tribeca development.
74. It follows that this application is also consistent with the **BMAP Proposal CC017** because it will help to bring forward the circumstances to unlock this development opportunity site.
75. This unusual factor was identified through the Building Control Officer’s advice which says:  
*‘notwithstanding the above it is noted that the application relates to the relocation of an existing amusement arcade at 19 North Street, the necessity for which is linked to a wider regeneration initiative for the northeastern part of the City Centre. This requirement to relocate may be a factor the Licensing Committee wish to consider should an application for an amusement permit be made to the Council’.*
76. Furthermore, the proposal is consistent with **SPPS Paragraph 6.271** because it protects and enhances diversity in the city centre by securing a new location in relatively close proximity for an established leisure and entertainment use that has existed for many years in this part of the centre.
77. Loss of retail floorspace within the prime retail core, however, remains a relevant factor and it is considered by **dBMAP Policy R1**.
78. This issue was considered by the Planning Authority in relation to the proposed relocation of the gaming use to the proposal site. It said (accurately):  
*‘Policy R1 of BMAP Plan Strategy refers to retailing in city and town centres. It states that non-retail development will be restricted in designated PRC (and PRF) so that no more than 25% of the frontage of the shopping street(s) to which it relates is in non-retail use and no more than three adjacent units are in non-retail use.*  
  
*According to the applicant, the proposed Oasis amusement arcade is relocating to the site from 19 North Street, which is to be demolished to facilitate the mixed use Royal Exchange development granted under Z/2010/1532. In this regard the proposal is not for a new amusement arcade but rather the relocation of an established facility. However planning permission runs with the land, a formal mechanism will be needed to*

*make sure that the existing and proposed premises do not operate concurrently as amusement arcades. The applicant has been asked to put forward a mechanism. One option would be a Section 76 Planning Agreement to require that on first occupation of the new premises, the existing premises at 19 North Street shall not at any time be used as an amusement arcade. The recommendation of this report is subject to an appropriate mechanism being put in place.*

*The retail composition of North Street currently falls below the 25% R1 threshold. The relocation of the non retail use floorspace, subject to the appropriate mechanism, will therefore not materially harm the implementation of this policy. However, once the Royal Exchange scheme is implemented the amount of non-retail frontage on North Street will reduce considerably. It is therefore considered that there will be no harmful impact upon the retail character of the area by the proposed change of use’.*

79. Furthermore, the Building Control officer noted that the proposal would not break up a continuous shopping frontage.
80. As Deeny LJ recently warned in the Hazeldene case, the Council should be careful not to fetter its own discretion in the application and implementation of BCCAP policy.
81. BCCAPP policy does not address the situation that arises here, where it is proposed to relocate the location of one permit to another within a relatively short distance. This is a policy lacuna that should weigh in favour of the applicant.
82. The policy lacuna in relation to the loss of retail floorspace has, however been filled by dBMAP and the SPPS which seeks to protect and enhances diversity of uses in the city centre. This has been considered by the Planning Authority who has concluded that the proposed development is not inconsistent with it.
83. Thus, the proposal is not inconsistent with criterion 1. While the proposal involves the loss of ground floor retail floorspace, it also involves the transfer of an existing permit which will allow that area to be used for another purpose and so either the policy does not apply or the proposed development does not offend criterion 1.

**Cumulative build up in a particular location**

84. Criterion 2 says that *‘the Council will limit the number of amusement permits it grants to one per shopping or commercial frontage and one per shopping centre. Where this number of permits has already been granted, or exceeded, no more amusement permits will be considered. Under this criterion, 2 or more amusement arcades in adjacent ground floor units will not be allowed (except for those already existing), including the ground floor extension or merger of an existing establishment into an adjoining unit’.*
85. This was also considered by the Building Control Officer. He said:
- ‘in addition to the existing Oasis Gaming Centre arcade at 19 North Street, which this application seeks to relocate, there is another amusement arcade located nearby at 13 North Street. In the desire to promote retailing in the City Centre, the Council is keen to avoid a clustering of such uses at a given location. Whilst the proposed arcade at 73-75 North Street may be in the general vicinity of the existing premises at 13 North Street it is not located on the same commercial frontage as this existing arcade’.*
86. From this, the officer concluded that the proposal complied with this criterion.
87. This analysis ignores the fact that there will be no net increase in the number of permits in the vicinity because the Section 76 ensures the planning use at No 19 North Street will be extinguished upon the applicant’s occupation of the new site.
88. It follows from this that there will be no material change to the amount of non-retail frontage of the street or the cumulative build-up of amusement arcades in a particular location when compared to the existing situation.
89. The proposal therefore complies with this criterion and it would be an unreasonable misinterpretation of the policy to conclude otherwise.

**Impact on the image and profile of Belfast**

90. Criterion 3 of the BCAPP says that amusement permits will not be granted at locations that are regarded as tourism assets and at gateway locations in Belfast City Centre.

91. The explanatory text describes a 'tourist asset' as *'any feature associated with the built or natural environment that is of intrinsic interest to tourists'*. A 'gateway' is a key entrance point into the City Centre which is *'considered suitable for landmark development capable of raising the profile of Belfast'*.
92. In both cases, the explanatory text confirms that clarification on what is considered to be a tourism asset or a gateway can be obtained from the Council.
93. In this regard, it is highly significant that the Building Control officer through its consultation response to the planning application confirms that the *'application premises have no neighbouring property which is a tourism asset, nor are they located at a gateway location'*. It is concluded that the proposal complies with this criterion.
94. The Planning Authority added to this and noted:  
*'the proposed location for the amusement centre is near to the retail core of Royal Avenue and adjacent to a mixture of uses including commercial offices, cafes and restaurants. There is no residential use in the immediate vicinity. Both the University of Ulster Belfast campus and St Annes Cathedral are considered sufficiently distanced from the site to be affected by the proposal. While the site does fall within a Conservation Area as there are no significant changes to the appearance of the building it is not considered that there will be any adverse impact on the character of the area'*.
95. There has been no material change in circumstances since the consultation response issued that would justify an alternative conclusion on this issue.

#### **Proximity to residential use**

96. There are no residential properties immediately adjacent to the premises.
97. According to the Building Control Official's assessment:  
*'the application premises are located at ground floor level, along the commercial frontage of North Street, where there is a mix of uses including cafes, restaurants, offices and retail units. The application premises are located inside the Retail Core and this area can therefore be viewed as a mixed-use area and not one that is predominantly residential in character'*.

98. The Council's Environmental Health Office are the competent authority in relation to issues of residential amenity. They raised no objections in relation to the proposal and its impact on general amenity (**Appendix 10**).
99. The Building Control official has also confirmed through his consultation response to the planning application that the proposal satisfies this criterion.

**Proximity to schools, youth centres and residential institutions for vulnerable people**

100. Consistent with the Building Control Officer's advice to the Planning Authority, there are none of these facilities within a 200m radius of the application premises.
101. There has been no material change in circumstances that would justify an alternative conclusion.

## **5.0 CONCLUSION**

102. All of the issues identified above have been considered in the planning process. The Planning Authority concluded that *'having considered the Amusement Permit Policy, in view of the planning issues taken into account under the SPPS and DCAN1, it is considered that the proposal is acceptable, provided that a mechanism is put in place to ensure that the existing and proposed amusement arcade premises do not operate concurrently'*.
103. That mechanism is provided by the Section 76 planning agreement which ensures that the use of the amusement arcade at the existing premises is extinguished upon the commencement of the new amusement arcade use at the proposal site.
104. The standard of test to be applied to permit applications is no higher than that applied to planning applications.



105. The location of the proposed gaming centre is entirely suitable and for the reasons set out above either the BCCAPP does not apply or the proposal does not offend the criteria within it.
106. For all of these reasons, the Council are respectfully invited to grant the amusement permit for the building.





BELFAST CITY COUNCIL

PLACE AND ECONOMY DEPARTMENT

BUILDING CONTROL SERVICE

CECIL WARD BUILDING, 4-10 LINENHALL STREET

BELFAST BT2 8BP

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TEL: 02890 270650

## AMUSEMENT PERMIT

Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985: Article 115

Permit Authorising Gaming by Means of Gaming Machines

### PART 1

#### AMUSEMENT PERMIT

The permit is granted to:

Applicant: **Oasis Retail Service Limited**

Of: **Oasis House , Mallusk Drive, Newtownabbey, BT36 4GX**

Premises: **Oasis Gaming Centre, 19 North Street, Belfast, BT1 1NA**

For the purposes of Article 108 (1)(ca) of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 authorising gaming by means of gaming machines in accordance with the conditions specified in Article 108 of that Order is granted.

This permit is granted on condition that these premises are not to be used for an unlawful purpose or as a resort of persons of known bad character.

(Stephen Hewitt)

**Building Control Manager**

**Issued Date: 5th November 2020**



**PART 2**  
**DETAILS AS TO GRANT OF PERMIT**

The permit specified in Part 1 hereof was issued by Belfast City Council from: **1st July 2020** and shall, subject to Article 117 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 remain in force until **30th June 2021**.

The Council issues this permit, granted for the purposes of Article 108 (1)(ca) of the said Order subject to the conditions:

**Where entrance is restricted to persons aged over 18:**

- (i) That no person under 18 is admitted to the premises; and
- (ii) That at any entrance to, and inside the premises there are prominently displayed notices indicating that access to the premises is prohibited to persons aged under 18.

**Where entrance is not restricted to persons aged over 18:**

- (i) That any machine in respect of which that condition mentioned in Article 108 (8) of the of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 is observed is located in an area of the premises which is separated from the remainder of the premises by a physical barrier which is effective to prevent access otherwise than by means of an entrance designed for the purpose;
- (ii) That only persons aged 18 or over are admitted to an area of the premises in which any such machine is located;
- (iii) That access to an area of the premises in which any such machine is located is supervised;
- (iv) That any area of the premises in which any such machine is located is so arranged as to permit all parts of it to be observed; and
- (v) That at any entrance to, and inside any such area there are prominently displayed notices indicating that access to the area is prohibited to persons aged under 18.



13<sup>th</sup> April

2022

OASIS RETAIL SERVICES LIMITED

And

PROJECT GOAT LIMITED

And

GOOSE LANE PROPERTY LIMITED

And

SPARROWHAWK PROPERTIES 606 LIMITED



THIS DEED is dated 13<sup>th</sup> day of April 2022

**BETWEEN**

- (1) **BELFAST CITY COUNCIL** of City Hall, Belfast, BT1 5GS ( the **Council**); and
- (2) **OASIS RETAIL SERVICES LIMITED** a company registered in Northern Ireland with company number NI007191 whose registered office is at Oasis House, Mallusk Drive, Newtownabbey, County Antrim, BT36 4GX, to include any successors in title, assigns, lessees or any other party that acquires an interest in the Property (the **Developer**); and
- (3) **PROJECT GOAT LIMITED**, a company incorporated and registered in England & Wales under company registration number 09806108, having its registered office at 49 Berkeley Square, London, W1J 5AZ, (**Owner A**); and
- (4) **GOOSE LANE PROPERTY LIMITED**, a company registered in Northern Ireland under company number NI070023 whose registered office is at 688 Shore Road, Newtownabbey, Northern Ireland, BT37 0PS, (**Owner B**); and
- (5) **SPARROWHAWK PROPERTIES 606 LIMITED**, a company incorporated and registered in Jersey, the registered office of which is at 9 Castle Street, St Helier, Jersey, Channel Islands JE4 2QP is the owner of a charge registered on the 5th January 2017 on Property A (the **Mortgagee**).

**BACKGROUND**

- a) The Council is the local planning authority for the purposes of the Planning Act (Northern Ireland) 2011 (the **Planning Act**) for the area in which the properties are situated.
- b) Owner A (as owner of Property A) has agreed to enter into this Agreement and is the owner of Property A which is subject to a charge registered by the Mortgagee.
- c) Owner B has agreed to enter into this Agreement and is the unencumbered owner of Property B.
- d) The Developer is the tenant/occupier of Property A has control of the Planning Application and is proposing to carry out the Development to Property B.
- e) The Mortgagee is the registered owner of a Charge on Property A and has agreed to enter into this Agreement and to give its consent to the terms of this Agreement.
- f) The Council, having regard to the provisions of the Local Plan and to all other material considerations, resolved at its meeting on 17<sup>th</sup> April 2018 that Planning Permission should be granted for the Development of part of Property B subject to the contemporaneous implementation of this agreement.
- g) This Agreement aims to facilitate the relocation of an amusement arcade/gaming centre from Property A to part of Property B to facilitate the mixed use Royal Exchange Scheme (Z/2010/1532/F). As planning permission runs with the land it is therefore necessary to enter

into this Agreement to ensure that the existing arcade at Property A does not, at any time, operate concurrently with any part of Property B as an amusement arcade/gaming centre.

## AGREED TERMS

### 1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement:

#### 1.1 Definitions:

**Agreement for Lease:** means the Agreement for Lease dated 20 November 2017 and made between Owner B (1) and the Developer (2) in relation to part of Property B.

**Commencement of Operations:** the operation of an amusement arcade/gaming centre at Property B, **Commence** and **Commences** shall be construed accordingly.

**Development:** the development of part of Property B authorised by the Planning Permission.

**Lease:** means a lease of Property B which may be granted pursuant to the Agreement for Lease.

**Plan 1:** the plan attached as Annex A. (Property A)

**Plan 2:** the plan attached as Annex B. (Property B)

**Planning Application:** the application is for change of use to an amusement arcade/gaming centre from retail use (relocation of existing amusement arcade from 19 North Street) and alterations to shop front at the application site which is situate at 73-75 North Street, Belfast, BT1 1NL pursuant to planning reference LA04/2018/0098/F

**Planning Permission:** the planning permission to be granted by the Council in respect of the Planning Application.

**Property A:** means the freehold property situate at 19 North Street, Belfast as shown indicatively edged red on Plan 1 registered at Land Registry contained under Folio AN 112407 Co Antrim and subject to a charge registered by Sparrowhawk Properties 606 Limited.

**Property B:** means that part of Folio AN173965 Co. Antrim as is intended to be demised by the Lease, being part of the ground floor at 73-75 North Street, Belfast.

**Planning Act:** Planning Act (Northern Ireland) 2011.

There is no reference to this definition in the body of the Agreement

**Working Day:** any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in Northern Ireland.

1.2 Clause headings shall not affect the interpretation of this agreement.

1.3 A **person** includes a natural person, corporate or incorporated body (whether or not having separate legal personality).



- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors in title, assigns, or any other persons deriving title in respect of the Property and in the case of the Council the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** excludes fax and email.
- 1.11 A reference to **this agreement** or to any other agreement or document referred to in this agreement is a reference to this agreement or such other agreement or document as varied and novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- 1.12 References to clauses and Schedules are to the clauses and Schedules of this agreement.
- 1.13 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.15 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

## **2. STATUTORY PROVISIONS**

- 2.1 This agreement constitutes a planning agreement for the purposes of section 76 of the Planning Act, and any other enabling powers.
- 2.2 The covenants, restrictions and obligations contained in this agreement are planning obligations for the purposes of section 76 of the Planning Act and are entered into by the Owners and the Developer with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.
- 2.3 The deed shall not be enforceable against any utility provider after the transfer or lease of apparatus to it.

- 2.4 Insofar as any of the covenants, restrictions and obligations contained in this agreement are not planning obligations for the purposes of section 76 of the Planning Act they are entered into freely by the Owners, Developer and by the Council by virtue of Article 8 of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 2002, Article 79 of the Local Government Act (Northern Ireland) 2014 and all other enabling powers with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.
- 2.5 The Council is the local authority by which the covenants, restrictions and requirements imposed upon the Owners and the Developer under this agreement are enforceable.

### **3. CONDITIONALITY**

This agreement shall come into effect on the date hereof with the exception of the covenants, undertakings and obligations contained within the Schedules hereto which shall bind the Properties and every part of the Properties upon the date of issue of the Planning Permission.

### **4. COVENANTS TO THE COUNCIL**

- 4.1 Owner A covenants with the Council to observe and perform the covenants, restrictions and obligations contained in Schedule 1 on behalf of itself and its successors in title and all persons claiming through or under it so as to bind each and every part of Property A.
- 4.2 Owner B covenants with the Council to observe and perform the covenants, restrictions and obligations contained in Schedule 2 on behalf of itself and its successors in title and all persons claiming through or under it so as to bind each and every part of Property B PROVIDED THAT the Council acknowledges and confirms that:
- 4.2.1 subject to the conditions of the Agreement for Lease, Owner B and the Developer propose to enter into the Lease; and
- 4.2.2 during such time as the Lease (or any renewal(s) thereof) subsist, neither Owner B nor its successors in title as owners of Property B will have any liability whatsoever under this Agreement to the Council or any other party as a result of the use of Property B (or any part thereof) as an amusement arcade/gaming centre;
- 4.2.3 if, during such time as the Lease (or any renewal(s) thereof) subsist, Property A is used as an amusement arcade/gaming centre then the Council shall have no remedy against Owner B (or its successors in title) under this agreement nor shall the use of Property B as an amusement arcade/gaming centre be required to cease.
- 4.3 The Developer covenants with the Council to observe and perform the covenants, restrictions and obligations contained in Schedule 3 on behalf of itself and its successors in title and all persons claiming through or under it so as to bind each and every part of the Developer's interest in Property A and Property B.

### **5. COVENANTS BY THE COUNCIL**

The Council covenants with the Owners and Developer to observe and perform the covenants, restrictions and obligations contained in Schedule 4.

## **6. MORTGAGEE'S CONSENT**

- 6.1 The Mortgagee consents to the completion of this deed and declares that any interest which it may in future hold in respect of Property A shall be bound by the terms of this deed as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Property.
- 6.2 The Mortgagee shall not be personally liable for any breach of the obligations in this deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Property.
- 6.3 For the purposes of this deed the Mortgagee will be deemed to be in possession of Property A if it has appointed an administrator, liquidator or any other insolvency practitioner to enforce its contractual rights in relation to the Property.

## **7. RELEASE**

No person or party shall be liable for any breach of a covenant, restriction or obligation contained in this agreement after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest for which that person or party was responsible prior to parting with such interest.

## **8. DETERMINATION OF AGREEMENT**

- 8.1 The obligations in this agreement, shall cease to have effect if before the Commencement of Operations the Planning Permission:
  - (a) expires;
  - (b) is varied or revoked other than at the request of the Owner; or
  - (c) is quashed following a successful legal challenge.
- 8.2 The obligations in this agreement shall cease to have effect if a planning permission is granted in relation to Property A which is for any use other than use as an amusement arcade/gaming centre and such permission is implemented.

## **9. STATUTORY CHARGE**

This deed is registrable as a statutory charge in accordance with section 76 and section 245 of the Planning Act and shall be registered as a charge on the Statutory Charges Register by the Council and shall not be registered against the title to Property A or Property B or at Companies House.

## **10. OWNERSHIP**

- 10.1 Owner A warrants that no person other than Owner A, the Developer and the mortgagee, has any legal or equitable interest in Property A. Until the covenants, restrictions and obligations in Schedule 1, 2 & 3 have been complied with, Owner A

will give to the Council within 15 Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property A:

- (a) the name and address of the person to whom the disposition was made; and
- (b) the nature and extent of the interest disposed of.

10.2 Owner B warrants that no person other than Owner B and the Developer has any legal or equitable interest in Property B. Until the covenants, restrictions and obligations in Schedule 1, 2 & 3 have been complied with, Owner B will give to the Council within 15 Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property B:

- (a) the name and address of the person to whom the disposition was made; and
- (b) the nature and extent of the interest disposed of.

## **11. REASONABLENESS**

Any approval, consent, direction, authority, agreement or action to be given by the Council under this agreement shall not be unreasonably withheld or delayed.

## **12. CANCELLATION OF ENTRIES**

12.1 If this agreement is determined pursuant to clause 8 or otherwise (and subject to the payment of the Council's reasonable and proper costs) the Council will upon the written request of Owner A issue a written confirmation of such performance or will within 10 Working Days of receipt of such written request lodge the appropriate application to cancel all entries made in the statutory charges register in respect of this agreement and furnish a copy of this application to the Owner A's solicitors.

12.2 If this agreement is determined pursuant to clause 8 or otherwise (and subject to the payment of the Council's reasonable and proper costs) the Council will upon the written request of Owner B issue a written confirmation of such performance or will within 10 Working Days of receipt of such written request lodge the appropriate application to cancel all entries made in the statutory charges register in respect of this agreement and furnish a copy of this application to the Owner B's solicitors.

## **13. NO FETTER OF DISCRETION**

Nothing (contained or implied) in this agreement shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.

## **14. WAIVER**

No failure or delay by the Council to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **15. AGREEMENTS AND DECLARATIONS**

The parties agree that:

- (a) nothing in this agreement constitutes a planning permission or an obligation to grant planning permission; and
- (b) nothing in this agreement grants planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.

## **16. NOTICES**

16.1 Any notice to be given under this agreement must be in writing and must be:

- (a) delivered by hand; or
- (b) sent by pre-paid first class post or other next Working Day delivery service.

16.2 Any notice to be given under this agreement must be sent to the relevant party as follows:

- (a) to the Director of Planning and Building Control, Belfast City Council, Cecil Ward Building, Linenhall Street, Belfast, Belfast BT2 8BP;
- (b) to the owner of Property A at its registered office address;
- (c) to the owner of Property B at its registered office address;
- (d) to the Developer c/o DWF (NI) LLP Jefferson House, 42 Queen Street, Belfast

or as otherwise specified by the relevant party by notice in writing to each other party.

16.3 Any notice or other communication given in accordance with clause 16.1 and clause 16.2 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or
- (b) if sent by pre-paid first class post or other next Working Day delivery service, at 9.00 am on the second Working Day after posting.

16.4 A notice given under this agreement shall not be validly given if sent by fax or email.

16.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **17. THIRD PARTY RIGHTS**

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

**18. GOVERNING LAW**

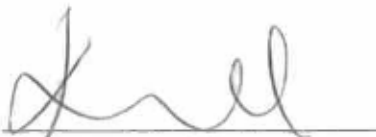
This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Northern Ireland.

**19. VALIDITY AND ENFORCEABILITY**

If any clause in this agreement is found to be invalid, illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this agreement.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**PRESENT** when the **CORPORATE SEAL**  
of the Council was affixed hereto  
in the presence of:-

A handwritten signature in black ink, consisting of a large initial 'L' followed by a series of loops and a final 'r'.

Lord Mayor

A handwritten signature in black ink, featuring a large, stylized initial 'W' or 'M' followed by several loops and a long, sweeping underline that extends to the left.

Chief Executive

**EXECUTED** as a **DEED** by  
**OASIS RETAIL SERVICES LIMITED**

acting

by a director

In the presence of:

  
\_\_\_\_\_  
Director  
Martin Trebble

  
\_\_\_\_\_  
Witness

Name *EUGENE DORAN*

Address *14 RUSSELL CRES.*  
*RANDALSTOWN*

Occupation *ACCOUNTANT*



EXECUTED as a DEED by  
PROJECT GOAT LIMITED

Acting

by a director, Neil Young,

In the presence of:

  
Director

Witness

Name

Gregory Martin

Address

19-21 Fountain Street, Belfast

Occupation

Solicitor

EXECUTED as a DEED by  
GOOSE LANE PROPERTY LIMITED  
acting  
by a director  
In the presence of:



Director



Witness *CHRIS RICE*

Name

Address *MURRAY ST, BOKFORD*

Occupation *SOLICITOR*

**EXECUTED** as a **DEED** by  
SPARROWHAWK PROPERTIES 606 LIMITED,  
acting  
by a director  
In the presence of:



Director

  
Witness

Name EMMA GUILLADINE

Address 28 ESPLANADE ST HELIER  
JERSEY, JE2 3QA

Occupation ADMINISTRATION

## **Schedule 1**

### **COVENANTS TO THE COUNCIL**

Owner A covenants with the Council as follows:

#### **NOTIFICATION**

- 1.1 To notify the Council of any disposal of its interest in Property A and of the name and address of the new owner and the date of disposal within 15 Working Days of such disposal.
- 1.2 To notify the Council, within 15 Working Days of the cessation the use of Property A as an amusement arcade/gaming centre.
- 1.3 Subject to paragraph 1.4 below, not to use, permit, cause or suffer the use of Property A as an amusement arcade/gaming centre which would require the grant of an Amusement Permit pursuant to Section 110 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 during such time as Property B is being used as an amusement arcade/gaming centre which would require the grant of an Amusement Permit pursuant to Section 110 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 from and including the Commencement of Operations at Property B.
- 1.4 The use restriction in paragraph 1.3 above shall not include the following uses (subject to obtaining planning permission and other necessary permits):
  - 1.4.1 use as a casino; or
  - 1.4.2 use as a bookmakers; or
  - 1.4.3 use as a bingo hall.

## **Schedule 2**

### **COVENANTS TO THE COUNCIL**

Owner B covenants with the Council as follows:

- 1.1 To notify the Council of any disposal of its interest in Property B and of the name and address of the new owner and the date of disposal within 10 Working Days of such disposal.
- 1.2 Subject to the proviso in clause 4.2 of this agreement, not to use, permit, cause or suffer the use of Property B as amusement arcade/gaming centre which would require the grant of an Amusement Permit pursuant to Section 110 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 whilst Property A is being used for the same purpose.

### **Schedule 3**

#### **COVENANTS TO THE COUNCIL**

The Developer covenants with the Council as follows:

- 1.1 To notify the Council of any disposal of its interest in either Property A and/or Property B and of the name and address of the new owner and the date of disposal within 10 Working Days of such disposal.
- 1.2 To notify the Council on or before the date of Commencement of Operations at Property B.
- 1.3 Upon Commencement of Operations at Property B as Amusement Centre/ gaming centre which would require the grant of an Amusement Permit pursuant to Section 110 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 the Developer will cease and desist from using the premises at Property A as an amusement centre / gaming centre which would require the grant of an Amusement Permit pursuant to Section 110 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985. Any existing amusement permit in respect of Property A will also be surrendered (without compensation) to the Council.
- 1.4 Not to use permit, cause or suffer the use of Properties A and B concurrently as amusement arcades/gaming centres which would require the grant of an Amusement Permit pursuant to Section 110 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985.

#### **Schedule 4**

#### **COVENANTS BY THE COUNCIL**

The Council covenants with the Developer:

- 1.1 To grant the Planning Permission on completion of this agreement without reasonable delay.

**Annex A. Plan 1**



Land & Property Services  
Seirbhís Talún & Maoine  
THE LAND REGISTRY CLARLANN NA TALÚN

Date: 06 Jul 2018  
County: Antrim  
Folio: AN112407  
Scale: 1:1250  
Our Ref: 2018/500631  
Your Ref: JG/AMcC/O38/14  
Map Ref(s): 13013NE3, 13013NE4

Sheet 1 of 1

Key to folio labels:

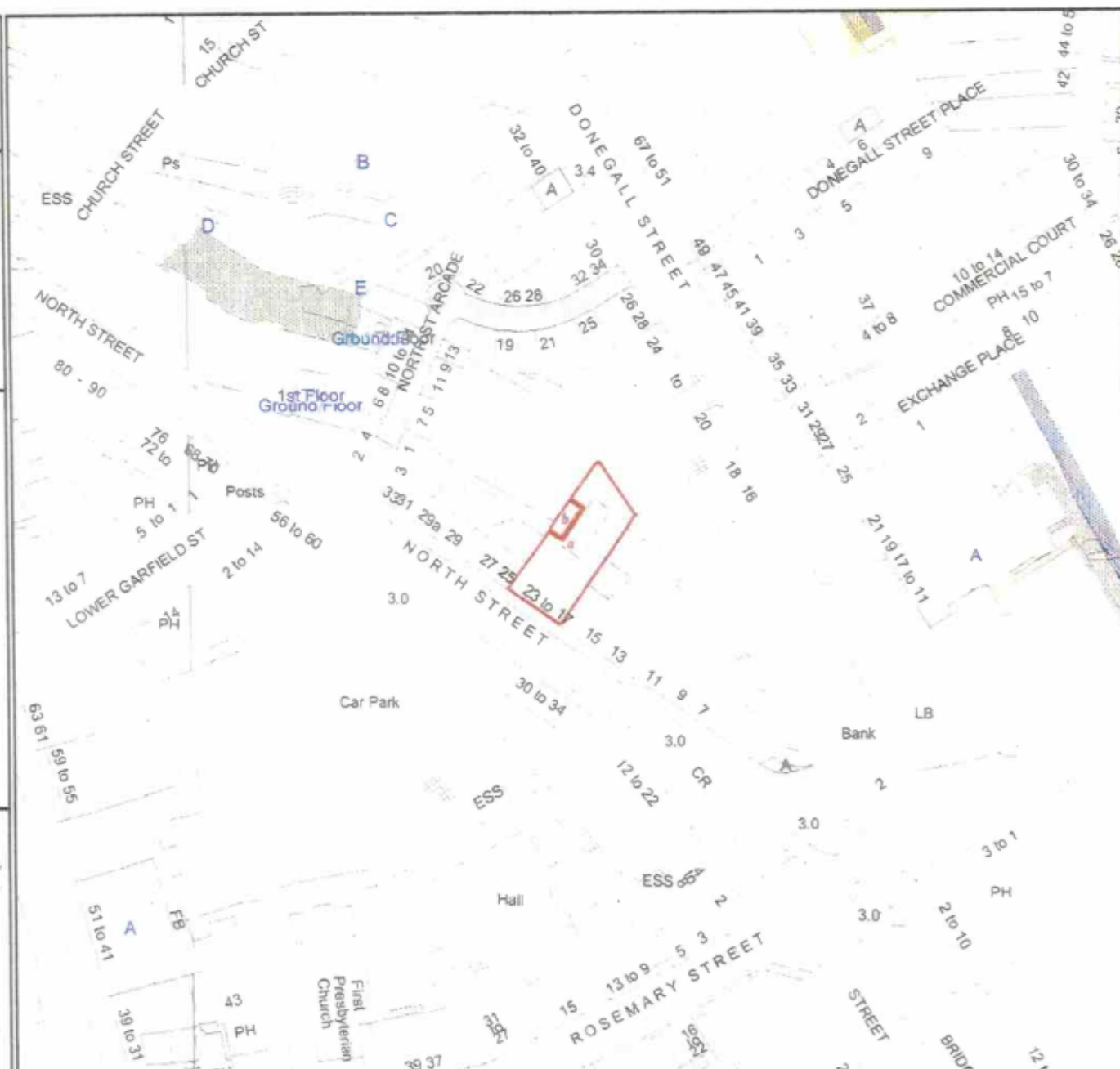
a - 4N112407 No.1  
b - 4N112407 No.2

This map is for illustrative purposes only. (Page 14517 of the Land Register and Rules (March 1999) as amended by the 2002/2003 Rules (February 2003) to the Amendment Rules 2000). These boundaries are not guaranteed. (Section 4 of the Land Registration Act 1925). The names of the Land Register, mortgage, and other features may have been affected by changes to the data, map subsequent to registration.

The map has been constructed using the highest available spatial resolution data available for the area. Aerial photography was used to identify the boundaries of the various land use categories. The map was then digitized using a GIS software package. The map was then printed on a high resolution printer.

The first step is to open the browser of the device connected to the mobile phone.

Crown Copyright Reserved

[illegible]

# PLAN I

**Annex B. Plan 2**

Map 1: The Demised Premises and Escape Corridor  
Ground Floor

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Oasis Retail Services Ltd( appellant)

V

Derry City and Strabane Council ( respondent)

Before Her Honour Judge McCaffrey

1.This is an appeal by the appellant company , Oasis Retail Services Ltd. (“Oasis”) against a decision of Derry City and Strabane District Council (“ the Council”) to refuse their application for an amusement permit under Art. 108(1) (ca) of the Betting, Gaming, Lotteries and Amusements (NI) Order 1985 (“the 1985 Order”) in respect of premises at Unit 23, Richmond Centre, Londonderry. In the course of the hearing, I heard evidence from a number of witnesses for both the appellant and the respondent and had various documents , including minutes of Council meetings, plans for the premises and planning documents , opened to me.

### **Background and Evidence**

2.The history of the matter is as follows. The Richmond Centre, where the unit the subject of this application is sited, is a shopping centre in Londonderry which gives onto Shipquay Street and Ferryquay Street within the historic walled city and close to the Diamond in the centre of the city. There is also access via a pedestrianised area on to Orchard Street and to the neighbouring Foyle Side Shopping Centre. It was built in the 1980’s and is very much a building of its time, having a brown concrete façade.

3. While the Richmond Centre is now operating at virtually full capacity, Unit 23 has lain vacant since Dunnes Stores relocated their city centre store to Foyle Side in 2001. Following this the premises were internally reconfigured and access to unit 23 was then no longer possible from within the Richmond Centre, but only from Shipquay Street. This may, in the view of the centre manager, have contributed to the challenge of finding a suitable tenant for the premises. Shipquay Street runs from the Guildhall Square to the Diamond and is distinctive because it is probably one of the steepest city centre streets in these islands. In recent years, the Council has sought ,through the Townscape Heritage Initiative, to restore buildings around the top of Shipquay Street in a way they consider compatible with its location as a key thoroughfare within the city walls. While Mr Monaghan, the Regeneration Manager with the Council, considered that the unit should be a primary commercial frontage, but he said that THI said they had no plans for regeneration/redevelopment regarding unit 23.



4. In March 2014, Oasis applied for planning permission for change of use for unit 23 to an amusement/gaming centre for persons aged 18 and over. That application was refused by DOE Planning Service on 4 December 2014 and Oasis appealed. The ground for refusal at the time was that the proposed use was contrary to the policy set out in the Derry Area Plan 2011 ("DAP"), in that the change of use would result in a loss of retail floor space in Shipquay Street, erosion of choice and convenience of shopping. By the time the appeal was heard by the Planning Appeals Commission ("PAC") in June 2015, responsibility for planning had passed to the local authorities, in this case, the Council. The Council therefore defended the appeal. The PAC decided to grant the appeal and in so doing, considered the DAP, which had to be given primacy in planning law from April 2015. In particular, the PAC found that, given that Shipquay Street had 60% of ground floor frontage either in retail use, or last used as retail, change of use for Unit 23 would not cause the area overall to be dominated by non-retail uses and there would not thereby be a significant loss of ground floor retail space.

5. Oasis made its application for an amusement permit to the Council on 10 December 2015. That application envisaged that the premises would operate 7 days a week from 9am to 12 midnight Monday to Saturday and 11.30am to midnight on Sundays. There would be 12 jobs created and a total investment of £.75 million. Plans were submitted which showed there would be approximately 70 seats within the centre and that the facilities would include provision of sandwiches, snacks and tea and coffee for customers. A subsequent plan was submitted which showed 100 machines. Mr Trimble, for Oasis, indicated that this was because of the time lapse between the application and the appeal and changes in design layout. It was his evidence that when opening new premises, Oasis would not start with a huge number of machines. He said their typical operation was in the range of 70-80 machines. He also stressed that Oasis fitted out their premises to a high standard and maintained them accordingly. He said he had been round all the local offerings in the city and he considered that there was nothing of a similar standard.

6. In accordance with the regulations, Oasis was required to advertise its application in local newspapers and following this, 3 letters of objection and a petition (treated as one objection) were received by the Council. Because of the objections, the matter was referred to the Health and Community Committee of the Council, which met on 11 February 2016. None of the objectors attended the meeting. There was no police objection to the proposed amusement permit. There was no statutory reason for the application to be refused, as the application by Oasis met all the requirements in Art.111 of the 1985 Order.

7. The Council wrote to Oasis on 24 February 2016, stating that the Health and Community Committee had decided that the application should be refused for 4 reasons :

1. The location of the proposed arcade was unsuitable and did not fit with the City Centre Development Plan ;
2. The proposed arcade is in close proximity to an area where youth congregate;
3. The proposed arcade is in close proximity to a similar development at Bank Place.
4. They also noted that in the view of the Committee there were adequate facilities within the City Centre Locality and no need for further provision of gaming facilities.

8. Oasis was given the opportunity to be represented at a meeting of the Committee before a final decision was taken and made its representations to the Committee on 10 March 2016. Their application was however refused. No additional reasons for the refusal were given.

9. It is relevant to note that on 11 December 2015, an application had been received for an extension to the existing amusement premises at 5 Bank Place. That application was in relation to premises at 1-2 Bank Place, owned by a Mr Heaney, who also owns the premises at 5 Bank Place. There were no objections and so the matter did not come before the Health and Community Committee, but was dealt with administratively under delegated powers and a provisional grant of licence was given. The Health and Community Committee does not seem to have been made aware that an application made after that of Oasis was in fact passed without it coming before the Committee and prior to Oasis' application being refused, in part at least on grounds of adequacy of provision in the City Centre location. Indeed, when the Committee was provided with a report of licensing activity in December 2015 and January 2016, the application was referred to as an amusement permit application and a renewal application, not an application to extend premises or for new premises, which may have caused some confusion. The Council ratified the decision to make a provisional grant of an amusement permit in relation to the Bank Place Premises, apparently without being expressly advised that another application had previously been received for the city centre and was recommended for refusal.

10. One of the grounds on which the Council turned down Oasis' application was that the Council felt there were adequate gaming facilities within the City centre and no need for such further provision. It was outlined to me at

the hearing that there are 5 licensed gaming premises within the city centre, including the existing premises at Bank Place. Two of these are located at William Street, one in Strand Road and one in Duke Street. A sixth is at The Bellagio, part of the Brunswick Complex in the Pennyburn area. I was also advised that there are two premises at Bridgend in Co Donegal which house amusements and which have slot machines which accept sterling coins, pay prizes in sterling and which also change currency for customers. I am advised that the cars parked in the car park of those premises shows the bulk of the customers are from Northern Ireland. Ms Thompson, who gave evidence for Oasis, said that on inspection, the Bridgend premises were superior in terms of their finish, fixtures and fittings. She gave an evaluation of each of the existing premises in the city and provided photos of them. They were mostly much smaller than the premises proposed by Oasis and the facilities were limited. I was also shown photos of the type of development proposed by Oasis and, without going into a comparative assessment of each venue which may involve criticising any other premises, it is fair to say that the standard of presentation proposed by Oasis and the amenities they propose would be of a superior standard. In addition, it was suggested that the proposed development would enhance the appearance of that part of Shipquay Street: While the signage for the proposed premises and windows would be discreet and opaque, there would be increased lighting on the street and the premises would be occupied, rather than shuttered and closed, as at present.

11. At the hearing, the main emphasis of the Council's objections seems to have altered from the original grounds. At their meeting with Oasis in March 2016, they focused on their concerns about losing retail frontage in Shipquay Street, concerns that young people who were in and around the shopping centre would be drawn into the proposed amusement premises and that the premises may also attract vulnerable people who were using other advisory services in and around the area of the Diamond. They were also concerned about the number of other less prestigious premises in the city centre. At the hearing, the evidence given by Alderman McClintock, the Mayor, focused on the city's tourist industry and said that Shipquay Street was in fact the main route for tourists walking from the Guildhall Square to the Diamond and on to St Columb's cathedral and the city walls. As such, she considered that the use of Unit 23 as an amusement arcade was not in keeping with plans for the walled city area. She accepted that there were other places to access the walls and that anyone walking round the walls could also see Bank Place.

12. As regards the vulnerability of young people to be drawn into the premises, they would only be open to persons aged 18 and over. Mr Trimble

gave evidence that all staff are trained to enforce this rule strictly and also that their research showed that their average customer tended to be in the thirty-plus age bracket. I am also satisfied from Mr Trimble's evidence that Oasis takes its responsibilities to keep to the law very seriously.

### **Relevant Law**

13. Article 111 of the 1985 Order, which governs the grant of amusement permits, states as follows:

- "1. An application for the grant of an amusement permit shall be made by the person who is, or by any person who proposes to be, the occupier of the premises for which the amusement permit is sought to the district council for the district in which those premises are situated and the applicant shall –*
  - (a) attach to the application a fee of £8.50; and*
  - (b) serve a copy of the application upon the sub-divisional commander of the Police sub-division in which those premises are situated.*
- 2. Subject to paragraphs (3) and (4), where an application is made for the grant of an amusement permit, the district council, after hearing representations, if any, from the sub-divisional commander upon whom notice is required by paragraph 1 to be served –*
  - (a) may grant the amusement permit; or*
  - (b) may refuse to grant the amusement permit.*
- 3. A district council shall refuse an application for the grant of an amusement permit, unless it is satisfied –*
  - (a) in a case where there is in force a resolution passed by the council as mentioned in Article 110(2)(a) or (b) which is applicable to the premises to which the application relates, that the grant of the permit will not contravene that resolution; and*
  - (b) that the applicant is a fit person to hold an amusement permit; and*

- (c) *that the applicant will not allow the business proposed to be carried on under the amusement permit to be managed by, or carried on for the benefit of, a person other than the applicant who would himself be refused the grant of an amusement permit; and*
  - (d) *that there is in force in respect of the premises a fire certificate.*
- 4. *Without prejudice to its power to refuse to grant an application for an amusement permit on any ground, a district council may refuse to grant an amusement permit in respect of premises, other than premises used wholly or in respect of premises, other than premises used wholly or mainly for the provision of amusements by means of gaming machines, if it is satisfied that, by reason of the purposes for which, or the persons by whom, or any circumstances in which the premises are or are to be used, it is undesirable that gaming machines should be used for providing amusements on those premises.*
- 5. *A district council shall grant the amusement permit subject to the condition –*
  - (a) *that the premises are not to be used for an unlawful purpose or as a resort of persons of known bad character; and*
  - (b) *where there is in force a resolution passed by a district council as mentioned in Article 110(2)(c) which is applicable to the premises to which an application for the grant of an amusement permit relates, that the number of gaming machines which may be made available for gaming on the premises shall not exceed such number (being a number not exceeding the number specified in the resolution) as the council may determine.*
- 6. *A district council may grant the amusement permit, subject to the condition –*
  - (a) *in the case of an amusement permit in respect of premises other than premises used wholly or mainly for the provision of amusements by means of gaming machines, that the number of gaming machines which may be made available for gaming on the premises shall not exceed such number as the council may determine;*

- (b) *in the case of an amusement permit in respect of premises used wholly or mainly for the provision of amusements –*
  - (i) *that the premises are illuminated in the manner specified by the council; or*
  - (ii) *that advertising of, and window displays on, the premises are in the form specified by the council; or*
  - (iii) *that such notices are displayed and such information given on the premises as the council specifies in relation to any condition to which the amusement permit is subject.*
- 7. *The grant of an amusement permit shall not be invalidated by any failure to comply with paragraph 3(a) or 5(b) and no duty of a district council to comply with paragraph (3)(a) or (5)(b) shall be enforceable by legal proceedings.*
- 8. *The Department may, by order subject to affirmative resolution, substitute for the fee specified in paragraph (1)(a) such other fee as may be specified in the order”.*
- 2. *By Art. 119, appeals against the refusal of grant of an amusement permit lie to the county court, whose decision is final. Case law confirms and the parties agreed that the appeal is a hearing de novo and accordingly, the parties could- and did- raise additional issues other than those raised in the initial application.*
- 3. *The other relevant legislation is contained in regulations under the Order.*

*The Amusement Permit (Prescribed Premises) Regulations (Northern Ireland) 1986, state inter alia:*

- 2. *The premises in which gaming by means of a gaming machine in accordance with the conditions of Article 108 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 is authorised by an amusement permit shall be –*
  - (a) *premises used wholly or mainly for the provision of amusements by means of gaming machines; or*
  - (b) *.....”.*

*The Amusement Permit (Additional Grounds for Refusal) Regulations (Northern Ireland) 1993 state, inter alia –*

2. *These regulations shall apply to an application for the grant of an amusement permit for premises within the meaning of regulation 2(a) of the Amusement Permit (Prescribed Premises) Regulations (Northern Ireland) 1986(b).*
3. *These regulations shall apply to an application for the provisional grant of an amusement permit as they apply to an application for the grant of such a permit.*

*Failure to comply with procedure*

2. *Where a district council is not satisfied that the applicant for the grant of an amusement permit has complied with the procedures set out in the Schedule, it shall refuse to grant that permit.*

*Representations from third parties*

3. *A district council may refuse to grant an amusement permit after hearing any representation in relation to the application for the grant of that permit which may be made by any person to the council not later than 28 days after the date that application.*

14. Both Counsel have helpfully referred me to the relevant caselaw. In this case issues arose about the matters of which the Council could take account when deciding to grant or refuse an amusement permit, the question of adequacy of provision and identification of “need” and also about the weight to be given to the decision of the PAC in deciding on the appropriate use of the premises and in particular, the suitability of the location of an amusement premises within the historic walled city.

15. Taking the first of these issues, Mr McCollum referred me to the decision of Maguire J in the case of **Re Oasis Retail Services Ltd** (13/1/2017), where it was confirmed that it is not necessary to establish need for amusement premises, although the presence of other premises and the facilities provided by them is relevant. In **Re O’Connor’s application**, [1991]NI 77, Murray LJ stated as follows:

2. *The council must consider each individual application on its merits and must not adopt a blanket decision, eg a decision to refuse all applications on the basis that gaming machines are undesirable and should not be permitted.*
3. *The sub-divisional commander is unrestricted as to the grounds on which he may object to the proposed application, eg traffic, moral danger to young people, adequacy of existing gaming facilities, unsuitability of premises etc.*
4. *Likewise, the council is unrestricted as to the ground upon which it may refuse an application and it may do so even if the sub-divisional commander makes no representation, but the council's decision is, in general, subject to the "Wednesbury" principles ie the well-known principles enunciated in the case of Associated Provisional Picture Houses Limited –v- Wednesbury Corporation [1948] 1 KB 223. The effect of these, put shortly, is that the Council must not take into account a matter which the law does not allow to be taken into account and it must not leave out of account a matter which the law says is to be taken into account. Finally, even if the Council keeps within the four corners of its legal powers its decision is liable to be quashed by the Court if it comes to a conclusion so unreasonable that no reasonable authority could ever have come to it.*
5. *Whether the application relates to an amusement arcade or pleasure fair premises, the Council has no discretion to grant the application and must refuse it if it is not satisfied about the fitness of the Applicant or any other matter referred to in Article 111(3).*
6. *If the application relates to pleasure fair premises but not if it relates to an amusement arcade, the Council, before deciding to grant the application, should, inter alia, consider in particular whether it is undesirable that gaming machines should be used in the premises in question on any of the grounds specified in Article 111(4), for example, the persons who are to use the premises. If it is satisfied that such undesirability exists, it may refuse the application".*

16. The appellant argued that the issue raised by the Council, suggesting that the proposed use of Unit 23 for an amusement premises was "unsuitable" and did not fit with the City Centre Development plan, had effectively been resolved by the PAC decision. The Council argued it was not and it was open to the court to come to a different conclusion to that of the PAC. Both counsel had referred me to the comments of Carswell LCJ, as he then was in *Re Ava Leisure Ltd's application for Judicial Review* [1991] NI 203, where he said :



*"I consider rather that the conclusion of the Deputy County Court Judge was right when he held that the local authority may take into account planning considerations and is not bound to accept in its entirety the decision of the planning authority on the issue of premises for the purpose of an amusement arcade. That is not to say that it should be anything but slow to differ from the views of the planning authority, to which such decisions are entrusted because of its expertise in that field".*

17. In **Donnelly v Regency Hotel Ltd [1985] NI 144**, the same judge commented:

*"I do not think the Court ought to absolve itself of its own statutory task of deciding upon suitability by placing complete reliance on the determination of a statutory agency, however skilled and experienced in a technical field the latter may be. It may, however, legitimately take the view that it will be slow to reach a conclusion which is at variance with the considered decision of a competent agency such as a planning authority acting within its own sphere, even if in principle it is entitled to do so".*

18. Mr Foster urged me to take account of the fact that the decision to refuse the application had been taken by the elected City Council on a cross-community basis and without any objection. He referred me to the judgment of Goddard CJ in the case of *Stepney Borough Council v Joffe* [1949] 1 KB 599, where he said :

*"That does not mean to say that the court of appeal....ought not to pay great attention to the fact that the duly constituted and elected local authority have come to an opinion on the matter, and it ought not lightly of course, to reverse their opinion. It is constantly said (although I am not sure that it is always sufficiently remembered ) that the function of a court of appeal is to exercise its powers when it is satisfied that the judgment below is wrong, not merely because it is not satisfied that the judgement was right."*

## **Judgment**

19. Having considered all the arguments put in this matter, there are a number of points which concern me about the refusal of this amusement permit.

20. The first is that the process by which the application was refused was, in my view, flawed. The application lodged by Oasis was referred to the Health and Community Committee of the Council, because there were objections to it. This delayed the whole process and allowed the application lodged by Mr Heaney for 1-2 Bank Place, in which there were no objections, to be dealt

with under delegated powers. It was referred to in a report to the Council as a renewal application and an application for an amusement permit. Significantly, the Health and Community Committee was not advised that this application had been lodged after the Oasis application which they intended to refuse and one of the grounds for refusal of the Oasis application was the existence of other gaming premises at 5 Bank Place. Mrs McClintock agreed that she would expect that each application should be dealt with in turn. Mr Gallagher, another councillor, agreed that he would expect the Councillors to be made aware if another application was to be approved under delegated powers when an earlier, similar application was potentially being refused. Neither was clear if there was a procedure for delegated decisions to be deferred pending any resolution of an application where there were objections. I consider that the provisional grant of a permit for the extended premises at Bank Place should not have been used, even in part, as a ground for refusal of the amusement permit for Unit 23, given that the latter application was lodged first.

21. Secondly, in relation to the planning considerations and the council's argument that the proposed development is not in keeping with the City Centre Plan, this is at odds with the decision of the PAC, which was decided in accordance with the Derry Area Plan. The PAC was satisfied that planning permission for an amusement arcade at this location would not adversely affect the retail character of Shipquay Street, which is already 60% retail. During the planning process, it was noted by the case officer that the NI Environment Agency considered that the proposed use would not have a detrimental impact to the character of the historic conservation area. As Counsel has reminded me, I am not obliged to follow the views of the Planning Appeals Commission, but they do have particular expertise in this area and so I would depart from their views on a planning issue only for the most compelling reasons. It does not seem to me that the reasons put forward by the Council are most compelling. They suggest in effect that the use of premises in a modern, concrete building for an amusement arcade would not be in keeping with the Council's plans for the historic walled city. First of all, most of the buildings within the historic walled city were built well after the walls themselves, in many cases hundreds of years after, so the suggestion that the city will be "restored" is not feasible. While the aim of regenerating this part of the city is laudable, and tourism is certainly to be encouraged, one must bear in mind the reality that all city centre streets in this city -and in most others- will have many and diverse businesses and uses. Mr Monaghan conceded that the Heritage Initiative had no plans for unit 23 and he agreed it was not a particularly attractive building. He

pressed the case for retail use, although it has lain empty for the last 16 years. In these circumstances where the Council cannot show a good reason to depart from the views of the PAC, I do not consider it proper to depart from its finding. It seems to me completely desirable that city centre premises should be occupied and open for business, rather than shuttered and closed. I am satisfied on the basis of what I have heard that Oasis would ensure that its signage and shop front are appropriate for the area and that the overall effect will be positive for the street frontage.

22.. I note also Mr McCollum's suggestion that the Council, being now the planning authority, is effectively seeking to usurp the role of the PAC by its refusal of an amusement permit, which would effectively overturn the PAC decision on change of use for unit 23. I make no comment on that, save to say that it would of course be undesirable and indeed improper for a Council to use the licensing process for such a purpose, if it were indeed the case.

23. The premises are located in proximity to an area where youths congregate and vulnerable people may be in the vicinity seeking advice at a number of venues or living in housing nearby. I accept the case made by the appellant that its policy and practice in running an adult business with strict adherence to the age limit would address this concern. It is also unclear that there is any real problem with youths congregating in the area, apart from times when catching buses or visiting the Richmond Centre, which has no direct access to the subject premises.

24. Adequacy of existing provision and Need. Given what I have said above about the premises at 1-2 Bank Place and that application, I consider that that it should not be taken into account in considering the question of need. I remind myself that there is no statutory requirement to consider the adequacy of the current provision or for the appellant to demonstrate need before an application can be granted, although other facilities in the area can be taken into account in deciding if the permit should be granted. I do not accept the argument put by Mr Foster that the appellant must demonstrate need or prove that the existing provision is inadequate. Unlike other licensing regimes applicable to liquor licensing, bookmakers and so on, there is no such requirement and no binding authority which would compel me to require it. There has been no detailed study done by the appellant or the Council on the question of need. The Council view seems to have been more that they did not consider more gaming premises were morally desirable. However I also take on board that there are premises in Bridgend, Co. Donegal, which attract a considerable percentage of their trade from Northern Ireland customers and it would be preferable if that

business remained in local businesses on this side of the border. Given the sort of service offered by Oasis, the scale of the proposed operation and the high standard of its premises, I consider that it will provide a different type of offering to that currently available and accordingly I grant the appeal. I order that Oasis Retail Ltd shall be granted an amusement permit for the premises at Unit 23, Richmond Centre, Londonderry, for a centre with a maximum of 70 gambling machines.

HHJ E M McCaffrey

23 June 2017

NOTICE OF APPEAL TO BELFAST RECORDER'S COURT

IN THE MATTER OF THE BETTING, GAMING, LOTTERIES  
AND AMUSEMENTS (NI) ORDER 1985

IN THE COUNTY COURT FOR THE DIVISION OF BELFAST  
BELFAST RECORDER'S COURT

BETWEEN:

OASIS RETAIL SERVICES LIMITED  
of Trench Road, Mallusk, Newtownabbey, Co Antrim

Appellant:

- and -

BELFAST CITY COUNCIL  
of The City Hall, Belfast

Respondent:

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This is an Appeal under Article 119 (4) of the Betting, Gaming and Amusements (NI) Order 1985 against a refusal by Belfast City Council to grant an amusement permit to the Appellant, Oasis Retail Services Limited in respect of premises at 7 Wellington Place, Belfast (hereinafter called "the premises").

The granting of an amusement permit is governed by the provisions of the 1985 Order, Articles 108 – 121.

Under the 1985 Order an amusement permit is required for the use of gaming machines on premises other than certain specified categories. By Article 109 (1),

the grantee of the permit is to be the occupier of the premises. The District Council is the granting authority under Article 111, paragraphs (1) and (2) of which provide:

- "111-(1) An application for the grant of an amusement permit shall be made by the person who is, or by any person who proposes to be, the occupier of the premises for which the amusement permit is sought to the District Council for the District in which those premises are situate and the Applicant shall:
- (a) attach to the application a fee of £8.50 and
  - (b) serve a copy of the application upon the Sub-Divisional Commander of the Police Sub-Division in which those premises are situated.
- (2) Subject to paragraphs (3) and (4), where an application is made for the grant of an amusement permit, the District Council, after hearing representations, if any, from the Sub-Divisional Commander upon whom notice is required by paragraph (1) to be served:
- (a) may grant the amusement permit. Or
  - (b) may refuse to grant the amusement permit."

Application may be made under Article 113 for the provisional grant of a permit where premises are about to be constructed, altered or extended, and the provisionally granted permit may subsequently be made final when the conditions attached to it have been fulfilled.

Appeals against the refusal of amusement permits are dealt with in Article 119.

"119-(1) Not less than 14 days before District Council:

- (a) refuses to grant or renew an amusement permit or
- (b) grants an amusement permit subject to a condition specified in Article 111(6) or renews an amusement permit subject to a condition specified in Article 115(7); or
- (c) imposes a requirement under Article 118.

The Council shall serve notice of its intention to so refuse, grant or renew or impose the requirement on the Applicant, or as the case may be, the holder of the amusement permit.

- (2) Every such notice shall state the grounds on which the Council intends to so refuse, grant, renew or impose the requirement under Article 118 and shall contain an intimation that if, within 14 days after service of the notice, the Applicant, or, as the case may be, the holder of the amusement permit informs the Council in writing of his desire to show cause, in person or by a representative, why the Applicant should not be refused or granted or renewed, subject to a condition or the requirement not imposed, as the case may require, the Council shall, before so refusing, granting, renewing or imposing the requirement, afford him an opportunity to do so.
- (3) If the District Council, after giving the Applicant or, as the case may be, the holder of the amusement permit an opportunity of being heard by it, decides to refuse the application or to grant or renew the application subject to a condition or to impose a requirement under Article 118, it shall serve notice of the decision on the Applicant or, as the case may be, the holder of the amusement permit, and such notice shall inform him of his right of appeal under paragraph (4) and of the time within which the appeal may be brought.
- (4) A person aggrieved by a decision refusing an Applicant for the grant or renewal of an amusement permit, or granting such an application subject to a condition specified in Article 111(6), or renewing such an application subject to a condition specified in Article 115(7) or imposing a requirement under Article 118

may, within 21 days from the date on which notice of the decision is served on him, appeal to the County Court.

- (5) The decision of the County Court on an appeal brought under paragraph (4) shall be final, and the District Council shall give effect to that decision."

Number 7 Wellington Place is situated between the junctions of Fountain Street and Queen Street on the same side of Fountain Street. The premises are vacant at the moment and had been occupied by Kentucky Fried Chicken take-away and restaurants and previous to that, were occupied by Wimpy. Planning permission for change of use of the premises was refused on the 22<sup>nd</sup> July 1998 and an appeal to the Planning Appeals Commission was heard on the 10<sup>th</sup> November 1998. After a full hearing and a visit to the site, Mr G R B Farrington presented his report and recommendation with regard to the premises.

### RECOMMENDATION

"I recommend that the Appeal be allowed and that planning permission be granted for the change of use including a new ground floor façade subject to the following conditions:

1. Before the change of use hereby permitted is commenced, the ground floor façade shall be constructed in accordance with detailed proposals shown on drawing AW317WD01 received by the Commission on the 24<sup>th</sup> November 1998.



2. There shall be no gaming and amusements of a sessional nature and the premises shall be used only for the playing of amusements with prizes machines together with ancillary snack bar and ancillary retail sales.
3. The use hereby permitted shall not commence until self-closing front doors have been installed and sound proofing carried out in accordance with a scheme to be submitted to and approved in writing by the Department.
4. No music, public address system or any other amplified sound shall be used other than background music which is not to be audible outside the premises.
5. The front windows of the premises shall at all times contain a display.
6. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission."

Mr Farrington's recommendation appears to have been duly endorsed by the Planning Appeals Commission.

The application for amusement permit to Belfast City Council was made on the 25<sup>th</sup> January 1999. It was considered by the Health and Environmental Services

Committee which resolved to recommend to the Council that, in its capacity as licensing authority it refused the application on the grounds that:

1. The Young Men's Christian Association was situated almost directly across the street and Church House, Headquarters of the Presbyterian Church in Ireland and the Belfast City Mission was situated almost 200 metres south of the premises.
2. Two centres of education ie: a Grammar School and a Technical College lay about 250 metres directly to the west of the premises;
3. The City Hall, the main focal point of the City Centre, was situate about 150 metres east of the premises. The City Hall, which was rightly regarded as one of the main Civic points of the city was a popular tourist attraction and its grounds were widely used by the public as an informal gathering place and meeting point.
4. The Linenhall Library, one of the oldest subscription libraries in the United Kingdom, was located less than 100 metres to the east of the premises, on the same side of the street and opposite to the City Hall. The building also housed the Belfast Society, a learned society for the investigation of natural history in Ireland. The Library was a cherished

landmark, frequented by members, students, scholars, literati and foreign visitors and reinforced the civic and cultural bearing of the area.

5. The premises were situated adjacent to the City Centre terminus bus stops, some of which were discharging and collection points for school children.
6. There were already thirteen amusement premises within ten minutes walk from the premises, one of which was situated in Queen Street which was some two minutes walk from the subject premises, though none of the existing premises licensed to provide amusement, were situated in prime retail streets or important secondary locations. Without exception, the premises currently licensed for the provision of the amusement were located in either tertiary retail locations or non-retail locations; and
7. The siting of an amusement type premises in the proposed location would have an adverse and detrimental effect on the surrounding area, the perception of the area as a whole and the future development of the area.

The Council had, at its meeting on the 1<sup>st</sup> December, adopted this recommendation.

The Appellant, in his appeal, cited the following grounds:

1. The Appellant proposed to offer facilities for Adults only and the Respondent's references to the Young Men's Christian Association, Centres of education and bus stops used by school children have little relevance to the application.
2. Church House is out of sight of the proposed premises.
3. The premises are situate in an area where leisure facilities such as pubs and restaurants abound. The adult gaming machine centre which the Appellant proposed, would complement the other leisure facilities.
4. The premises at 7 Wellington Place were formally a Kentucky Fried Chicken outlet and currently lies vacant. The high standard of shop fit proposed by the Appellant and the attractive shop front to be installed would improve the appearance of the building out of all recognition and improve the surrounding area generally.
5. The Appellant proposes to offer facilities very different from those afforded by the existing amusement premises to which the Council refer. They are situated in tertiary locations and are quite different in character from the adult gaming machine centre proposed by the Appellant.

6. Notice of the Application was advertised in three newspapers, the News Letter, the Irish News and Belfast Telegraph. No objections were received from any source. Evidence to substantiate the Council's grounds of refusal is lacking.

Mr Steinberg, Managing Director of Oasis Retail Services Limited indicated that they had seven amusement centres in Northern Ireland with planning permission. He indicated they had never any problem from the Police or the local Councils in relation to same. They had high level of management control in their operation. These premises were different to what has existed in Northern Ireland, but similar premises had been extensively established in England, Scotland and Wales. The expenditure on these premises will be £250,000 approximately. He described the exterior as having modest display windows, the frontage will fit in well with the existing retail premises in the area. This is great improvement from the previous occupation by Kentucky Fried Chicken and before them a Wimpy Bar. The premises will have toilets, air-conditioning, wood panelling, carpeted extensively. One cannot see into the premises from the street or from the premises out onto the street. The age imposed limit is 21 years and this is done by free choice of the company. In this type of premises adults do not wish to be in the company of young people. Tea, coffee, soft drinks and sandwiches will be available. An automatic closing door insulates the premises so that no sound is emitted.

A similar premises owned by Oasis has now been opened in Newry at the Market Square at Hill Street which is the prominent shopping area in Newry.

Photographs of the Newry premises are produced. Mr Steinberg indicated that in the North Street premises which Oasis have he is waiting on the general redevelopment of the whole of the North Street area before entering into a reconstruction of the premises there, which will in due course be comparable to what is proposed at 7 Wellington Place. He indicated that the average age of customers in these type of premises would be 35 years of age and older.

In his company he is the Chairman and there is an Operations Director, Operations Manager, Area Managers, Branch Managers and Operators.

The witness explained how he had taken over the lease from Kentucky Fried Chicken paying a similar rent. This was with the assent of the Landlord and how he had to pay no additional premium in respect of the take over. The existing amusement centres in Belfast were in tertiary or fringe shopping locations or back streets, one might say. Many of these premises were poorly fitted out and maintained. Many contained amusement games, video games, pin tables.

The evidence on behalf of the Appellant in respect of the present application was based on a completely different standard of amusement centre. The only existing one in Northern Ireland was in Newry but an impressive display of evidence in similar amusement centres in England was put before the Court.

These were shown to be in main shopping streets, many in the primary retail areas. The machines operating in them appeal to a mature clientele. The premises had a window display and a restriction of view into the interior or from the interior out and the display was to blend with the ordinary retail premises. Sound insulation was an important factor and there should be no cause for noise or disturbance to passers by. Proper customer facilities as already mentioned by Mr Steinberg was clearly visible from the display of 12 different locations in England showing photographs of the premises and their surrounding area. All of them seem to be in primary locations or even pedestrian precincts and there would seem to have been no restriction on the location. Records were also produced showing about over 160 odd premises similar to this application which had been located and granted planning permission in conservation areas in England, Scotland and Wales and of those number, approximately 19 were located in listed buildings.

A video recording was shown indicating how the premises would appear when completed. It showed an attractive frontage with a heavy mahogany doorway and reception. When I visited the Newry premises on the 31<sup>st</sup> May at 12 noon, it reminded one of the video which had been produced at the Court. There is an automatic side door which opened as one approached and one was immediately conscious of the carpeted premises. Outside the door there was no sound of music and when one entered, it was into a quiet atmosphere with background

music. The automatic door is made of heavy mahogany and opened and closed in a smooth operation.

There were three customers in the premises and one Operator who was on a rostrum and who had a clear view of the entrance. There is subdued lighting and one could only describe the premises as a fresh, pleasant place. The three customers were male and in the middle age range.

The Newry premises can only be described as superior quality to the other amusement centres visited. At the Newry premises there were three large notices indicating no person under 21 years of age is permitted to enter in each display windows. In addition, outside the premises there was a sandwich display indicating the amusement centre and again containing the notice no person under 21 permitted to enter. It was felt such a billboard advertisement might not be suitable in Wellington Place but when I next visited it was noted that seven similar billboards were situated outside premises in Wellington Place. These indicated sandwiches, ice-cream, café, lottery tickets, camera films and mobile phones.

Plans prepared by Alan Wheeler and Associates were produced and show the existing frontage of 7 Wellington Place and also show the proposed new frontage when complete. The front elevation would be returned to its original height. The plans had received approval of the Planning Authority.



Mr Kevin Milhench gave evidence on behalf of Oasis and Mr Kenneth Crothers gave evidence on behalf of the Belfast City Council. Both were experienced Chartered Surveyors. Mr Milhench expressed the view that Wellington Place had declined as a retailing destination in the last decade. This resulted from the growth of Belfast Primary and secondary zones such as Castle Court. The rental growth in Wellington Place is very low whereas before Castle Court was established, it was good. Retailers who would have occupied Wellington Place in his opinion, were now moving to locations like Bloomfield Avenue and the Lisburn Road. He said that Wellington Place no longer opens for trading with the rest of the City Centre on Thursday evenings and Sunday afternoons. He explained that Wellington Place is a main traffic route into the city centre and an amusement centre such as this, will improve the premises and the vicinity and enhance consumer's choice. He felt that it would not in any way prejudice existing or future occupiers, retail service sector or office and will not affect investment in any form. Static or declining values are the main deterrents to investments.

When questioned in relation to amusement centres in the new shopping areas where a landlord has control of the class of tenant, Mr Milhench indicated that there were amusement centres at York Gate, in the mall of the bus station and in the Ards Shopping Centre. He felt they were becoming increasingly acceptable in shopping areas.

Mr Crothers agreed with Mr Milhench that in recent time rents had not increased in Wellington Place. He would say, however, that Wellington Place was in the secondary class of shopping standard. He detailed each of the shops on Wellington Place and did not agree that speciality shops were moving to the Lisburn Road and Bloomfield Avenue as Mr Milhench had indicated. His view was that Belfast City Centre needs to have speciality shopping in order to attract people. If specialist positions were lost to the Belfast City Centre, it would be detrimental. He cited four investments from property owners in recent years in Wellington Place. He felt that the character and role of Wellington Place would be compromised if a development, like an amusement centre was permitted. A development like this would have an adverse affect on the retail and office property perspective. It is not a proper place for such a centre.

In cross examination Mr Crothers agreed that his evidence to the Court today was similar to that given to the Planning Appeals Commission with some slight amendments. Mr Crothers was not familiar with the situation in England and Scotland as given in evidence to the Court. He had made no investigation of the situation in England or Scotland. He agreed his evidence was rejected at the Planning Appeal.

Katherine Toner gave evidence of a report presenting the findings of a research survey conducted on behalf of Oasis by Ulster Marketing Surveys Limited. Two fully trained members of their company were allocated points and randomly

approached every third pedestrian who passed by on Wellington Place on three different days at different times. The witness was a Director in the company with 32 years experience. The questions put to these pedestrians were biased in favour of a positive answer.

Belfast City Council had engaged a survey to be carried out by Belfast City Management Staff Members. The Chief Executive of it was Mike McCann and Development Director Joanne Jennings. They canvassed the views of the retailers in Wellington Place, but their instructions were received only a day or so before the hearing at Court. Indeed, Mr McCann admitted that his survey had taken place on the 6<sup>th</sup> April, the day before the third day's hearing of the application at Court. I came to the conclusion the questions appeared to be loaded for favourable answers.

It is felt that the survey evidence from each side was not convincing and of little assistance to the Court.

A considerable amount of time was given to the consideration of children with regard to this amusement centre. Campbell McKinstry of Royal Belfast Academical Institution advised that there were 1,033 pupils of whom 274 were in sixth form. Sixth form had freedom to go into the town at lunch break. They had the option of going to the school canteen or to go out on the town for their lunch. Lunch break was from 12.50 to 1.35 pm. School ended at 3.25 but between 3.25

and 5.00 pm there were often extra activities, sports and following sports, the pupils returned to the school. Wellington Place was a direct route for the pupils to obtain transport, both in Wellington Place and in Donegall Square. They had an experience of some of their boys attending at 147 Club which is the amusement club in Queens Street. If boys got access to this type of centre, it would cause concern to the school authorities as well as the parents. A question of gambling was addressed in tutorial at the school. There was one occasion in which one of their boys was involved in debt as a result of gambling. The management of the School were opposed to this development.

In cross examination Mr McKinstry agreed that gambling, drinking and betting was common to many schools and advice was given accordingly in relation to these. It was put to the witness that Club 147 was a gaming centre which is run down and tacky and badly managed, whereas the present development would restrict admission to anyone under 21 years. The witness agreed that the pupils at school were in uniform and would be easily identified. He advised that a week before the Court hearing the Principal had been approached by Belfast City Council and a request made for someone to attend the Court hearing. The witness was not aware of any objection raised by the school authorities when the Planning Applications were advertised in relation to the premises. He also agreed that in Castle Street, quite a number of girls and boys board buses leading to the Falls Road where a number of Catholic schools are located.

A Mr Mayne, Building Control Surveyor for Belfast City Council, visited Shaftesbury Square premises which belong to Oasis in the morning at 11.00 am and there were five people all under 18 present. There were two staff there. A colleague was with him and they played the machines for 10 – 15 minutes. These five people were in the area where under 18 years of age were forbidden and they were playing machines, they were visible to the members of staff but no check was made by the staff. Two of those five were in school uniforms. On one other occasion on visiting the premises there was one person under 18 years of age seen and on four other occasions when they visited the premises, there were no other children there. This witness agreed there was a notice restricting admission to anyone under 18 years of age.

Mr Steinberg who had given evidence at the commencement of this application, was recalled on the second day to give an explanation of his investigation into this incident. He said he was extremely concerned and was taking steps to ensure that this just could not recur. He repeated that there was a restriction notice measuring 18 inches by 24 inches posted at their Shaftesbury Square premises and also at their North Street premises, but it was put to him in cross examination that a notice is ineffective if people can walk past it. He said that his staff are trained to ensure that they ask for identification if they are in doubt as to the age of a customer.

Frank E Caddy, Chief Executive of the Chamber of Trade, on behalf of Belfast City Council indicated that he would be opposed to the location of the amusement centre at 7 Wellington Place. He said there were plenty of other locations more suitable.

Councillor Carmel Hanna, explained that she was a member of Belfast City Council for a number of years and on the Committee who dealt with the refusal of the permit. She said it was unanimously agreed that the permit should be refused. This decision was ratified by the Council. The witness said that if an entertainment permit was granted in this case, then it would be difficult to control future applications in the same area.

Mr McSparran QC, Counsel for the Appellant submitted that the 1995 Order at 111(4) confers unfettered discretion in the granting of a permit to premises such as this amusement centre. There is no question of opening the flood gates if the permit was granted in the present case. Complete control rests with the Belfast City Council. A licence is for 12 months and is renewable annually. It was also pointed out that the Belfast City Council seems to have no reservation about granting entertainment permits in Castle Street.

It was submitted by Mr Weir QC on behalf of the Belfast City Council that there was no desire or need for this amusement centre. No one was called who said he wanted an amusement centre such as this or that there was a need for same.

I was impressed by the Appellant's submission that on the grounds for the refusal of the permit set out in the letter of the 3<sup>rd</sup> December 1999 no representative appeared from the YMCA or from the Headquarters of the Presbyterian Church and no-one appeared from the Linenhall Library and no objections were raised by any of these bodies when the Planning Applications were advertised and neighbourhood notices served. Not one of the retailers or staff from their premises in Wellington Place appeared or raised objections at the Planning Applications and no-one appeared from them at the Court hearing, despite the canvassing of Michael McCann.

I visited Queen Street which is not far from the premises in question and noted a high quality Ladies and Gents Outfitters, O'Hare and Company is located beside the 147 club and appears to be trading quite successfully. They have been there now for 3½ years. I also visited the Twilight Zone amusement premises on the Dublin Road. I had often passed these premises on foot and had not noticed them until my attention was focused by this application.

It seems clear from the evidence that a well designed, expensively equipped premises such as in this application has not previously been established in Northern Ireland. The premises referred to in Newry are something of the same standard but not as extensive as this application. The high quality of premises shown in the photographs located in England clearly show them to be situated in prime retail areas. Many of the English retail outlets are now in Belfast in large

numbers and it would appear from the evidence submitted that amusement centres do not damage existing retailers. This expensively equipped centre is shown to be popular in England and the UK. There are planning approval conditions attached to the operation of the premises. The management has voluntarily agreed to an age limit of 21. Their evidence is that young people would tend to deter the type of clientele which these premises are clearly designed to attract.

Having considered all the evidence and having visited all the sites in question on a number of occasions, I am satisfied that this application is of a different standard to anything previously made in Northern Ireland and I grant the appeal.

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(1) 1998/A196  
(2) 1998/A231  
(3) 1998/A232

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**on appeals to the Commission by Oasis Retail Services Ltd under Article 32 of the Planning (Northern Ireland) Order 1993, Regulation 12 91) of the Planning (Control of Advertisements) Regulations (Northern Ireland) 1992 and Article 45 of the Planning (Northern Ireland) Order 1993 in connection with (1) the refusal of planning permission for the proposal change of use of a restaurant to a gaming machine centre for over 21 year olds, including alterations to the ground floor façade; (2) the refusal of consent for the proposed erection of an illuminated fascia sign and (3) the refusal of listed building consent for a proposed new ground floor façade at No 7 Wellington Place, Belfast.**

The Commission has considered the attached reports by Mr G R B Farrington, the Member appointed to hear the appeals. It has taken account of the representations made and evidence provided by, or on behalf of, the Department of the Environment, the appellant, interested third parties and it has also taken account of the views of Belfast City Council.

Commissioner E Kinghan took no part in the discussion on or the deciding of this appeal.

The premises in question form part of a four storey building and are comprised of floorspace on the ground and first floors. The remainder of the property is in office use. No 7 Wellington Place forms one of a group of three Georgian buildings which are listed and lie within the Belfast City Centre Conservation Area.

The Commission, in agreement with the appointed Member, has not been persuaded that the reasons for refusal and objections raised by third parties in respect of these proposals have been sustained. In so concluding it has attached particular significance to the following points:-

- (1) Planning Policy Statement 5 (PPS5) Retailing and Town Centres, which sets out the broad framework or approach to town centre development, acknowledges the diversity of town centre uses and seeks to promote and encourage, where appropriate, a range of non-

- retail uses, including leisure. The objective is to ensure that such uses contribute to the diversity and vitality of centres without encroaching on primary retail cores (which are to be identified in development plans) at ground floor level;
- (2) the development plan for the area, the Belfast Urban Area Plan 2001 (BUAP), while defining the main shopping area within which the appeal premises lie, does not identify a primary retail core. Although the Belfast City Centre Vision for the Future (BCCV) and Development Guidance Note 8a on the Control of Non-Retail Uses in Belfast's Main Shopping Area. (DGN 8a shows a prime shopping frontage) the former is a consultation document and the latter sets out guidance and they cannot be accorded the same weight as the BUAP or the more recently published PPS5. In effect there is no development plan definition of a primary retail core for Belfast City Centre as referred to in PPS5 (paragraphs 11 and 40);
  - (3) in any event the guidance of paragraph 4.3 that planning permission for amusement centres within the main shopping area is likely to be refused is set in the context of such development having an adverse effect on the character and function of existing commercial uses. The Department produced no specific evidence to demonstrate that the proposal would have such adverse effects and the arguments presented on behalf of Belfast City Council on this point were essentially anecdotal in nature or based on "perceptions" of the impact of the proposal, rather than being based on specific examples of the detrimental impact of amusement centres on the viability and vitality of shopping areas;
  - (4) the proposal would not result in the loss of a retail unit, given the former use of the premises as a restaurant;
  - (5) in terms of visual impact, in the context of the building being listed and its location within the Belfast City Centre Conservation Area, it was generally agreed that the proposed alterations to the façade and signage would represent an improvement on what exists at present;
  - (6) in terms of the impact of the proposal on the character of Belfast City Centre Conservation Area it is not considered that the proposal will have any more detrimental effect than the former carry-out restaurant use and, in overall terms, having regard to the proposals to improve the façade, its impact would be positive.

Accordingly, the decisions of the Commission on these appeals are as follows:-

1998/A196 – proposed change of use to gaming machine centre for over 21 year olds and alterations to ground floor façade.

- (1) Before the change of use hereby permitted is commenced the ground floor façade shall be constructed in accordance with the detailed proposals shown on drawing AW317WD01 received by the Commission on 24 November 1998.
- (2) There shall be no gaming and amusements of a sessional nature and the premises shall be used only for the playing of amusement with prizes machines together with ancillary snack bar and ancillary retail sales.

- (3) The use hereby permitted shall not commence until self-closing front doors have been installed and sound proofing carried out in accordance with a scheme to be submitted to and approved in writing by the Department.
- (4) No music, public address system or any other amplified sound shall be used other than background music, which is not to be audible outside the premises.
- (5) The front windows of the premises shall at all times contain a display.
- (6) The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

1998/A231 – Proposed erection of an illuminated fascia sign.

Allowed subject to the following condition:-

- (1) This consent relates solely to the revised fascia signage proposed on drawing AW317WD01 received by the Commission on 24 November 1998.

1998/A232 – Listed Building Consent for proposed alterations to ground floor façade.

Allowed subject to the following conditions:-

- (1) This consent relates solely to the revised proposals shown on drawing AW317WD01 received by the Commission on 24 November 1998.
- (2) The alterations shall be begun before the expiration of 5 years from the date of this consent.

**R S HAWTHORNE**  
Chief Commissioner

15<sup>th</sup> January 1999

**THE PLANNING (NORTHERN IRELAND) ORDER 1991  
APPEAL UNDER ARTICLE 32  
REPORT TO COMMISSION BY MR G R B FARRINGTON**

**FILE REF NO: 1998/A196IG REF NO: 33368 37410**

**DPO REF NO: Z/98/2118**

**Appeal to the Commission by Oasis Retail Services Ltd (previously Joyland Amusements (NI) Ltd) in respect of the refusal of permission in connection with the proposed change of use from restaurant to gaming machine centre for over 21 year olds including new ground floor façade at 7 Wellington Place, Belfast.**

**1.0 BACKGROUND AND PRELIMINARY MATTERS**

- 1.1 I heard this appeal on 10 November 1998 in Park House, 87-91 Great Victoria Street, Belfast and, having visited the site, now present my report and recommendation.
- 1.2 The Department issued a notice of decision on 22 July 1998 refusing permission for the following reasons:-
- “01 The Department considers that the use of these premises for a gaming machine centre (for over 21 year olds) is inappropriate in this main shopping area within Belfast City Centre. If permitted it would prejudice the provision of retail and shopping related uses and create a precedent for similar developments elsewhere to the detriment of the established shopping area.**
- 02 The Department considers that the use of these premises for a gaming machine centre (for over 21 year olds) is inappropriate in this Conservation Area in that it would not enhance the character of the Conservation Area by virtue of physical appearance and land use.”**
- 1.3 Belfast City Council was consulted by the Department on 21 May 1998 with an opinion to refuse. The Council agreed with this opinion.
- 1.4 The Commission received the appeal on 10 August 1998 and advertised it in the local press on 21 August 1998. Five representations were received from third parties, objecting to the proposed change of use; one of these was from Belfast City Council.
- 1.5 This appeal under Article 32 was heard concurrently with appeals against the refusal of listed building consent for the ground floor façade and the refusal of advertisement consent for an illuminated fascia sign – see separate reports 1998/A232 and 1998/A231 respectively.

- 1.6 Since the kernel of the Department's objection was in relation to the principle of the change of use it was agreed that this should be addressed first.

## **2.0 SITE AND SURROUNDING AREA**

- 2.1 The appeal premises form part of a four storey building and are comprised of 229 m<sup>2</sup> on the ground floor together with 23m<sup>2</sup> and 27m<sup>2</sup> respectively on the first and second floors. The balance of the accommodation in the rest of the building consists of professional offices. The ground floor is vacant and was last used as a Kentucky Fried Chicken outlet.
- 2.2 The building forms one of a group of three, numbers 7, 9 and 11, Georgian four storey buildings (c. 1830), sandwiched between two modern buildings fronting Wellington Place between Fountain Street and Queen Street. All three Georgian properties are listed and Wellington Place lies within the recently designated (May 1998) Belfast City Centre Conservation Area (BCCCA).

## **3.0 PLANNING HISTORY**

- 3.1 Copies of the Department's planning history schedule and key map are attached to this report. The key map also shows existing and approved amusement arcades, the main shopping area boundary (BUAP 2001) and the BCCCA boundary.
- 3.2 The history schedule was criticised by the appellant for omitting the following history of the appeal premises which post-dated the listing of the building (1979).
- Planning permission for alterations to shop front (Z/85/1945).
  - Advertisement consent for KFC fascia and projecting sign (Z/85/1960).
  - Listed building consent for alterations to shop front (Z/86/0509).

All three were granted when the ground floor was converted from a Wimpey Bar to a KFC outlet (C.1985).

## **4.0 DEPARTMENT'S CASE**

- 4.1 The Department drew attention to various consultations carried out in its determination of the application. Roads Service, Water Service and the Fire Authority had had no objections. The Divisional Environmental Health office had requested that the applicant be advised to ensure that all plant and equipment is so situated, operated and maintained as to prevent the transmission of noise to nearby premises.

- 4.2 The HMBB consultation reply regarding the application for listed building consent reads as follows.

"The ground floor of this unit is already a mess and so HB would have no objection in principle to this scheme.

The drawing is however very basic and we will require detailed drawings of the proposed alterations before commenting."

- 4.3 Various policies were cited by the Department. The gist of these is as follows.

- The site is inside the Main Shopping Area as defined in the BUAP 2001 and “Belfast City Centre Vision for the Future” (BCCV). BUAP policy S1 states that city centre shopping will be concentrated in the Main Shopping Area and policy CC3 is to develop the city centre as a major centre for leisure and tourism by strengthening the entertainment function.
- DGN8A was published in December 1994 on the foot of concern in the BCCV regarding the need to control the overall number of non-retail ground floor uses on prime shopping streets. This document highlights the danger that non-retail uses could begin to dominate shopping frontages within parts of the main shopping area. One of the objectives of the DGN is to ensure that the vitality of the shopping area is not adversely affected by the uncontrolled spread of non-retail uses (3.3). It identifies an area of “prime shopping frontage”. The appeal site is not within this area. The guidelines relating to the remainder of the main shopping area (4.2 and 4.3) include the advice that amusement centres do not complement and support shopping uses and are normally inappropriate in a shopping area. Applications for amusement centres are likely to be refused within the main shopping area because of their adverse effect on the character and function of existing commercial uses (DGN8A 4.3).
- Development Control Advice Note 1 (DCAN1) on amusement centres published in 1983 is concerned with their effects on the amenity and character of an area and highlights as an important consideration whether an amusement centre will break up an otherwise continuous shopping frontage. Although this can be mitigated through design of the façade and entrance it may be a serious objection in some streets. The note also states that amusement centres are out of place in Conservation Areas.
- Although the BCC Conservation Area had not been designated when the application was submitted it was a material consideration in determining it.

4.4 Statement on behalf of the Department, including replies during questioning, may be summarised as follows.

- (1) The land use survey (“B” available on file) highlights the importance of both sides of Wellington Place east of Upper Queen Street as a shopping street. Six out of nine properties in the frontage containing the appeal site were in retail use. DGN8A refers to the complementary role of service uses such as banks and restaurants. The KFC restaurant was a shopping related use in contrast to amusement centres which the DGN categorised as normally being inappropriate in a shopping area. Castle Street and North Street illustrated the problems associated with them, such as the vacancy and run-down appearance of neighbouring properties, the garish signage and unattractive facades. Most amusement centres had shop fronts but passers-by could still see the machines inside.
- (2) The proposal would prejudice the provision of retail and shopping related uses in this main shopping area within Belfast city centre and it would set a serious precedent for similar developments elsewhere to the detriment of the established shopping area.
- (3) There was no evidence in Belfast of an improvement in the image of amusement centres. The proposals to upgrade the appellant’s North Street premises had only very

recently been submitted (see Schedule item 11) but it should not be inferred from this that Oasis was seeking disingenuously to influence the current appeal decision.

- (4) Wellington Place was not prime retail core in the sense that it is not shown as prime shopping frontage on the map on page 52 of the BCCV.
- (5) In the hierarchy of plans the BUAP 2001 was at the apex. The essence of policy S1 was to concentrate shops in the main shopping area but there was no specific policy restricting non-retail uses in the main shopping area. The proposal would contribute in strengthening the entertainment function of the city centre for the purposes of BUAP policy CC3. No policy in the BUAP was offended by the proposal but the DGN guidance had been issued after its adoption.
- (6) The Department had not referred to Planning Policy Statement 5 (PPS5). Paragraph 22 indicated that diversity of uses makes an important contribution to the vitality and viability of town centres. According to paragraph 25 entertainment uses were to be encouraged where they contribute to the diversity and vitality of a centre, without encroaching on the primary retail core, where defined, at ground floor level. Within primary retail core areas the Department controls non-retail uses (paragraph 23). Wellington Place was in the heart of the city but a primary retail core had not been defined for the city centre.
- (7) DCAN1 (1983) was now a dated document. The reference it amusement centres being a bad neighbour use did not apply in this case. The advice that amusement centres were best sited in districts of mixed commercial use was applicable and the appeal proposal would not break up a retail frontage because the previous use as a restaurant was non-retail. Likewise, the concern in the advice note regarding sessional entertainments does not apply.
- (8) DGN8A was a non-statutory guidance note which owed its origins to the non-statutory BCCV document and would have to be accorded much less weight than PPS5. Its main concern, the supplanting of retail uses by non-retail uses does not apply in this case. The Department has no specific evidence that the appeal proposal would adversely affect the retail function of the shopping area except for the visual aspects cited in respect of the company's premises in Castle Street and North Street. Nevertheless, the Department remains concerned that the proposal, if permitted, would adversely affect the vitality and viability of Wellington Place as a retail location and its ability to attract investment.

## **5.0 BELFAST CITY COUNCIL**

5.1 In preparing for the appeal the City Council commissioned retail experts Crothers Dean & Curry (CDC) to undertake a study of the property market in Wellington Place. The gist of the expert evidence, including replies to questioning, was as follows.

- (1) More than any other location in the city centre Wellington Place (east of Upper Queen Street) and Fountain Street is perceived as an "up market" retail location. This role is distinct and widely recognised in the retail property market. It is reflected in and enhanced by the presence of higher calibre retailers of fashion, footwear, giftware and other higher value items.



- (2) Whilst the value of ground floor units rose in line with the average increase for Belfast shops over the period 1976 to 1995 there has been a distinct arrest in retail growth in Wellington Place in recent years leaving it lagging far behind the growth of prime city centre retail rents.
- (3) Although Wellington Place enjoys a high level of ground floor occupancy this appears to be at the expense of rental growth which, on the whole, has not even kept pace with inflation over the past 5 or 6 years. This reflects a certain fragility which should not be disturbed or prejudiced by the introduction of inappropriate or incompatible uses.
- (4) Perhaps conversely, Wellington Place has attracted very considerable investment from property owners over the last couple of years, but further investment of this calibre would be prejudiced if the character and role of Wellington Place were to be compromised.
- (5) Because the prime city centre retail pitch is so concentrated and expensive, it is essential that locations such as Wellington Place are allowed and encouraged to flourish as secondary retail locations.
- (6) From the design proposals for the premises, it is evident that the appellant is seeking to present a benign external appearance with the intention of blending into the retail streetscape. This has been a developing trend for amusement centres in recent years. However, the retail property market associates amusement centres with locations which have failed or are inappropriate in which to locate. Amusement centres portray a negative image. Without exception in Belfast City Centre they are located in tertiary retail locations or non-retail locations as adduced in evidence to appeal 1997/A100 concerning premises in Ann Street.
- (7) An amusement centre in Wellington Place would create an adverse perception of the street from a retail and office property perspective and is likely to be a deterrent to investment in both sectors. From a commercial property points of view this is an inappropriate location for an amusement centre. It would also create a precedent which would be detrimental to the vitality and viability of Wellington Place as a retail and service location.
- (8) In commercial terms the concern is with the use rather than the quality of the building. The presence of KFC, notwithstanding the perceived problems with hot food bars, did not appear to have had a significant impact on the up market image of adjacent retail properties. However, a restaurant use is a complementary use to shopping, whilst an amusement centre is the “obverse”. The removal of the inappropriate KFC signage and an improved façade would make a positive contribution in aesthetic terms. Irrespective of external aesthetics, however, there was a negative view of the use among retailers.
- (9) In the last 10-15 years some amusement centre operators have expanded into a different market from the traditional shabby arcades, shooting galleries and sessional bingo businesses. There is now a wide band of provision. It would make sense for an operator to seek to locate a quality product in a quality location.

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- (10) There may have been many amusement centres allowed on appeal in conservation areas in England and Wales but one would have to have undertaken a qualitative assessment of the location to derive anything of significance from this in retail terms.
- (11) Apart from one instance involving a client in Cathedral Square, the Council's retail consultant could not cite any specific evidence of retailers or office occupiers incurring difficulties due to a nearby amusement centre. However, there remained a general adverse perception of the use which would deter retailers from locating in Wellington Place.
- (12) Viewed in PPS5 "health check" terms currently Wellington Place had an ability to attract investment and the recent opening of the Centra shop represented a significant increase in vitality as perceived in retail property terms.
- 5.2 Commissioners should note that to assist the Council's retail expert's early release the parties agreed to his evidence being heard at the start of the hearing before the Department presented its case.
- 5.3 The essence of the City Council's planning arguments, including replies to questioning, is as follows.
- (1) The CDC evidence on the property market supports reason 01 in that the proposal use would prejudice the provision of retail and office uses to the detriment of the established shopping area. A land use which is a deterrent to investment in the area would conflict with the shopping policy objectives set out on page 75 of the BUAP 2001.
- (2) Based on the CDC evidence the appeal proposal would also conflict with DGN8A paragraph 4.3
- (3) There was a duty under Article 50 of the Order for special attention to be paid to the desirability of preserving or enhancing the character or appearance of BCC Conservation Area. The appeal proposal would neither preserve nor enhance the character of the area because it would act as a deterrent to investment in the area. This was a particularly sensitive location in conservation terms close to the City Hall and Donegall Square. The terrace at 7-11 Wellington Place is one of the few remaining examples of Georgian architecture in the city.
- (4) As a matter of law the "preserving or enhancing" provision in Article 50 necessitated a test that a proposal, to be accepted, should effect an improvement in the character or appearance of the conservation area.
- (5) Amusement centre uses are inappropriate in sensitive locations within conservation areas. If they must be in a conservation area they should be confined to tertiary retail locations or non-retail locations which are least sensitive in terms of townscape and buildings of architecture and historic interest.
- (6) By implication land use can affect the external appearance of a building. The aesthetics of this particular proposal were unexceptionable but there remained the implications of the proposed use as a disincentive for investment in the vicinity. In "health check" terms it could be viewed as a "cuckoo in the nest".

- (7) In the hierarchy of policies PPS5 had precedence over all except the BUAP and the conservation area document. The importance accorded in PPS5 paragraph 22 to diversity of uses had to be balanced with the presumption in favour of development that would make a positive contribution to ensuring existing town centres continue to provide a focus for shopping.

## **6.0 OTHER OBJECTIONS**

- 6.1 The written representations from commercial objectors (Tom Jones (Belfast Ltd); Parsons & Parsons Ltd; and Alliance & Leicester PLC) raise similar issues to those identified by the City Council. In addition fears are expressed that the appeal proposal will encourage undesirables and gangs of youths looking for opportunities to shop lift and that “quality shoppers” will be deterred from entering the area. The objection from a private individual is directed at the inappropriateness of the use in a city centre shopping area.

## **7.0 THE APPELLANT’S CASE**

- 7.1 The amplification of the appeal proposal by the appellant’s witnesses is summarised as follows.
- The centre will comprise amusement with prizes only. There will be no video games, pool tables etc. Amusement with prizes outlets operate within a strict legal code under the Gaming Acts and are controlled by the licensing authority. Payouts are limited to £15 in cash. Winnings can also be taken in vouchers exchangeable for goods in the centre and in shops with which trading arrangements are made.
  - Adult gaming machine centres have evolved into sophisticated operations involving high levels of investment and a high quality image. The majority of non-resort based amusement centres are now amusement with prizes outlets. The typical modern centre has a well designed façade with shop window displays which are regularly maintained and changed. The Wellington Place proposal will follow this format with a luxury interior, including air conditioning, seating and electrically operated lobby doors preventing noise leakage. Patrons will be over 21 with only one player per machine. The over 21 rule is strictly enforced in the company’s own interests employing staff training, management and vigilance.
  - The applicant is introducing this type of facility for the first time to Northern Ireland. The emphasis is on high quality management. The high level of investment in premises, outfitting, machines and management precludes the old style of amusement centre or of an outlet reverting to that style. It also requires an accessible location in a major centre to justify the investment.
  - The appellant’s investment in Wellington Place will be in the region of £250,000 and the unit will employ about 10 people. The company plans to expand its operations creating 20 higher “spec” new units throughout the Province over the next 5 years.
- 7.2 Many of the points advanced on behalf of the appellant were already thoroughly aired during cross-examination of earlier witnesses. The essence of the balance of the case, including replies to questioning, may be summarised as follows.

- (1) A distinction was drawn between statutory policies (BUAP 2001, BCC Conservation Area, PPS1 and PPS5) and non-statutory policy and guidance (BCCV, DCAN1 and DGN8A), it being argued that the former carry greater weight.
- (2) The proposal accords with BUAP policy CC3. The plan does not have specific policies restricting non-retail uses within the Main Shopping Area and the appeal proposal has not been found to run counter to any other policies in the Plan.
- (3) PPS1 (paragraph 23) states the Department will seek to promote and retain mixed uses, particularly in town centres, and encourages them in areas accessible by public transport. The precautionary principle does not disturb the PPS1 presumption in favour of development except in cases where there is demonstrable harm to matters of acknowledged importance. A primary objective of the applicant is to develop a high quality frontage in keeping with the building's listed status and position in the conservation area in keeping with the quality initiative espoused in PPS1.
- (4) PPS5 paragraph 23 deals with proposals for non-retail uses in town centres and distinguishes between primary retail cores and the rest of town centres outside the core. The PPS does not rule out non-retail uses even within the primary retail core and has no objection to non-retail uses outside the core subject to individual assessment of each proposal. The proposal is supportive of many of the PPS5 policies and does not run counter to any of them.
- (5) The 1998 Conservation Area designation document makes no reference to amusement centre outlets but the Minister's foreword refers to "leisure activities" being part of a vibrant centre. The enhancement strategy aims to encourage "a variety of land uses including offices, retailing, cultural, recreational and residential". There is no policy objection to leisure/entertainment uses within the Conservation Area and it is recognised that the policies must allow for new and changing forms of commercial outlet.
- (6) Appendix II of the BCCCA document sets out various environmental objectives and development control guidelines. These include the advice that changes of use that are likely to have an adverse effect on land or buildings which contribute significantly to the character of the Conservation Area will not normally be permitted. The ground floor façade together with the advertisement had been designed to complement and enhance the building and the Georgian terrace in which it forms a part. Any reasonable amendment required by HMBC will be fully complied with. The existing insensitive façade will be replaced with a traditionally styled shop front complementing the character of the building and enhancing the appearance of the Georgian group. The proposed use is at least as appropriate as the previous hot food bar use and would be an environmental improvement by the elimination of litter, short term parking and cooking odours.
- (7) Well-established management techniques will prevent loitering occurring inside and outside the premises. The absence of amusement only machines, the provision of self-closing automatic doors and no external loudspeakers or playing of loud music inside will all contribute to ensuring that there will be no noise disturbance. The premises are likely to be open during normal shopping hours only but longer opening would not damage the amenity of the area. The operation will add to the attractions

and diversity of uses in the area and the high quality shop window display will contribute visual interest.

- (8) The proposal is considered to be in keeping with the policies and objectives of the Conservation Area and will in time become a welcome addition to the area.
  - (9) As regards the non-statutory policies, the proposal contributes positively to the policies and objectives of the BCCV document and DCAN1 does not present any basis in its guidance which would oppose the subject proposal.
  - (10) DGN8A followed from the Vision statement's land use policy section which wished to see non-retail uses within prime shopping streets, not prohibited but controlled so that their proliferation or grouping would not damage the retail character of the prime shopping streets. The DGN has grossly exceeded its remit in 4.3 by presuming to exclude all forms of amusement centre from the total main shopping area. There is no justification for this blanket ban and this was dealt with by the Commission in appeal 1997/A100 for 35 Ann Street.
  - (11) The Commission's attention is drawn to the appeal decisions allowing amusement centres at 5 High Street, Bangor (1995/A236), 1 Hibernia Street, Holywood (1996/A145) and 35 Ann Street (1997/A100) (Document "G"). The Commissioner in the Ann Street appeal referred to the "Twilight Zone" chain of amusement centres having been "granted permission in a number of key sites in shopping streets and conservation areas throughout the Province". The current proposal for the amusement with prizes variety of outlet had at least as strong a case as these appeal proposals which have been allowed.
  - (12) Document "H" provides a selection of appeal decisions in Great Britain illustrating that modern amusement centres, such as the one proposed in Wellington Place.
    - Can be sited within prime and secondary town centre retail frontages;
    - Can be sited within conservation areas and within listed buildings; and
    - Are looked upon as complementary and supporting retail and retail related activities in town centres.
  - (13) The appellant had not consulted an expert in the local property market to assess the impact of the appeal proposal. If the retail and office functions of neighbouring properties went down market and through lack of investment the area slipped from secondary to tertiary the disimprovement would detract from the Conservation Area.
  - (14) Since planning permission goes with the land there could be no assurance that the proposal would not be sold on but it was unlikely that a down market operation would be run in an expensive property. The company was not investing the amount of money it had in the property to close it.
- 7.3 When the question of planning conditions was canvassed, without prejudice to the principle, it was indicated that the appellant would regard the following restrictions as reasonable.

- A condition preventing gaming and amusements of a sessional nature.
- The retention of a shop window display.
- Arrangements preventing any view of the machines by passers-by outside the premises.

Since this was a city centre site a restriction on hours of opening was not applicable.

## **8.0 POST-HEARING SUBMISSION**

- 8.1 At the hearing, it emerged that subject to the submission of satisfactory drawings, the Department was not opposed to the details of the proposed ground floor façade and was confining the prosecution of its case to the principle of the change of use. The submitted drawing was criticised for lack of detail and I was asked to rule whether an amended drawing could be accepted in the absence of re-advertisement. It was conveyed to me that agreement was possible on the necessary amendments and I ruled that since it appeared that the overall impact of the amendments would be less than the original I did not see how any third party interests would be prejudiced if the appeals were determined on the basis of revised drawings.
- 8.2 On 24 November 1998 the Commission received four copies of drawing AW317WD01 together with an accompanying letter from the Department indicating that the revised details had been agreed by the Divisional Planning Office, Built Heritage and the appellant. A copy has been forwarded to the City Council for information.

## **9.0 CONSIDERATION**

- 9.1 At the hearing the Department's objection was shifted from a broader based concern with the use and the appearance of the building to focus more narrowly on the implications of the change of use on the retail and shopping related functions of the city centre and on the conservation area. In short, whilst the Department has conveyed its satisfaction with the revised details for the alterations and signage of the listed building, the principle of the change of use remains in contention.
- 9.2 From the evidence presented and my own observations I can confirm that, whilst it was agreed that this section of Wellington Place may be categorised as "a secondary retail location" its ambience is generally one of quality shopping. Moreover, the terrace 7-11 Wellington Place, which is singled out in the commentary and photographs on page 42 of the Conservation Area document, is closely intervisible with Donegall Square. One is therefore conscious that while this may not be prime frontage in retail terms, the location is a very sensitive one at the heart of the city. Given the importance of the site in civic shopping and conservation terms, the concerns of the Department and the City Council are readily understandable. It remains to be considered, however, whether these concerns are sufficiently well grounded having regard to the relevant policies and the other material considerations to outweigh the normal presumption in favour of granting planning permission (PPS1 paragraph 59).
- 9.3 The first matter of importance for the Commission to bear in mind is the duty under Article 50(5) of the Order for special attention to be paid to the desirability of preserving or

enhancing the character or appearance of BCC Conservation Area. This will be applicable in the consideration of the appeal generally and the second reason for refusal in particular.

- 9.4 Next, it is necessary to examine the hierarchy of policy and advisory documents in order to determine the weight that should be accorded to individual policies, guidance and advice.
- 9.5 PPS5 sets out the Department's policies for town centres and retail developments for all of Northern Ireland (paragraph 4) and will take precedence over existing development plans, in relation to retail planning policy and general principles for town centres (paragraph 9). The PPS, which underwent a process of widespread consultation, is rooted in Article 3 of the Order. The BUAP 2001 was prepared under Part III. Both policy and plan are therefore grounded in statute and are an important basis for deciding planning applications (PS5 paragraph 9). I consider the appellant was correct in drawing a distinction between statutory policies and non-statutory policy and guidance which carry less weight. BCCV was only published as a consultation document and DCAN1 is non-statutory and dated. DGN8A is non-statutory guidance issued in 1994, two years before the publication of PPS5. Some weight was accorded to this document in the Commission's determination of appeal 1997/A100, but it should be noted that the significance of PPS5 was not aired as an issue at that hearing.
- 9.6 Unlike the BUAP 2001, PPS5 includes general guidelines, within primary retail core areas, for the control of non-retail uses at ground floor level (paragraph 23). However, a primary core has not been defined for the city centre. Outside core areas proposals for leisure and entertainment are encouraged "where they contribute to the diversity and vitality of the centre" (paragraph 25). According to the PPS, the diversity of uses in town centres makes an important contribution to their vitality and viability. However, one has to take into account also the presumption in favour of development that would make a positive contribution to ensuring town centres continue to provide a focus for shopping (paragraph 22). Clearly, a proposed entertainment use which would prejudice and be a deterrent to investment in an area of the town centre would conflict with sustaining and enhancing the vitality and viability of town centres which is a general objective of the PPS (paragraph 5).
- 9.7 In addressing this balance, Commissioners will have noted that, except for the visual problems with the appellant's operations in Castle Street and North Street, the Department had no specific evidence that the proposal would adversely affect the retail functions of the area. In Wellington Place the enhanced façade and the shop window display would overcome the visual problem and, indeed, would effect a radical improvement over the current unsightly KFC presentation. I attach more significance to the evidence on behalf of the City Council, the essence of which is that, irrespective of the merits of the external aesthetics which were acknowledged:-
- There is a negative view of amusement centres in the retail and office property markets; and
  - An amusement centre at the appeal premises would create an adverse perception of the street in property terms and would be a deterrent to investment.
- 9.8 This expert evidence was not rebutted by evidence of similar standing on behalf of the appellants. However, considered in its entirety including replies to questioning, I have the following concerns with and observations regarding this evidence.

- Apart from an anecdotal reference to an incident in Cathedral Square, no evidence of actual negative impact by way of specific examples of reduced property values or deterrence of prospective tenants was provided.
  - Similarly, no evidence of a specific nature was adduced to enable the Commission to compare the implications in property terms of continued hot food bar use of the premises with the appeal proposal.
  - The acknowledgements that there is now a quality end of the amusement centre business addressing the requirements of a different market from the traditional arcades and that such an operator would seek a quality location are worthy of note.
  - Given the absence to date of the new generation of amusement centres in Belfast the perception in the local property market is likely to have been largely influenced by the traditional arcades in marginal tertiary retail locations.
  - The evidence that the pattern of rental growth in Wellington Place in recent years compared with prime city centre retail locations “reflects a certain fragility” lies uneasily with the evidence that recently the street has attracted very considerable investment.
- 9.9 All in all, I judge the CDC evidence insufficiently well grounded with specific arguments to provide a reasonably secure assessment of the implications of the appeal proposal in property terms on the commercial well-being of Wellington Place. Viewed in broader terms, I am not persuaded that the proposed change of use of itself would have a significant impact on the retail and office functions of this area of the city centre. Whilst the issue of precedent was argued, I believe the appellant is correct in pointing out that other applications would be judged on their merits including the implications of each in relation to cumulative impact.
- 9.10 The Department put considerable emphasis in its case on DGN8A and paragraph 4.3 in particular which indicates that amusement centres are unlikely to receive permission in the Main Shopping Area. The guidance note was issued on the foot of a concern with non-retail incursion in retail frontages in the consultative BCCV document. It has been overtaken by PPS5 which contains general guidelines for ground floor non-retail uses in core shopping areas. The appeal proposal is neither in a designated retail core nor, given its present use, does it involve a change to non-retail use. The statement in paragraph 4.3, which is specific to amusement centres is advisory in status and has to be weighed accordingly within the current policy framework for town centres which inter alia seeks to encourage diversity of uses in town centres.
- 9.11 DCAN1 issued in 1983 predates the broadening of the amusements business which has occurred in recent years and therefore is directed primarily at the traditional arcades and video game centres. The bad neighbour issues relating to residential areas, churches, schools etc do not apply in this case.
- 9.12 Taking all these factors together I am not persuaded that reason 01 has been sustained.
- 9.13 Turning to reason 02, setting aside the aesthetic merits of the proposal which it was agreed were positive, there was a more generally based objection that the amusement centre would be an inappropriate use in the Belfast City Centre Conservation Area recently in May 1998. The City Council was correct in drawing attention to the duty under Article 50 for special



attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. The matter of character raises issues wider than the external appearance of the proposal and land use characteristics are therefore relevant.

- 9.14 Based on the evidence, including the submitted drawings, I discern the appeal proposal as clearly distinguishable from the open fronted traditional arcade or video game centre characteristically relying on a garish overt presentation to the street often accompanied with the emission of intrusive noise. Internal activity is proposed to be enclosed from external view and the property will have a traditional shop front façade broadly complementary with the listed building. With self-closing doors and a lobby the activity and noise inside will be contained mainly in the building with minimal impact on passers-by. This has to be contrasted with the current carry-out restaurant use with its garish signage and general ambience of the conservation area and this listed Georgian terrace which is a significant landmark building in Wellington Place.
- 9.15 Mann L. J. in the Court of Appeal case of *SOS Env –v-South Lakeland District Council* (654 [1991] JPL) in interpreting the equivalent section to Article 50(5) said that the statutorily desirable object of preserving the character or appearance of an area was achieved either by a positive contribution to preservation or by development which leaves the character or appearance unharmed, that is to say, preserved.

In the case of the current appeal I would judge the implementation of the proposal as outlined at the hearing and specified in the amended drawings to represent a significant improvement in the appearance of the listed building and in conservation terms a preferable land use compared to the existing situation. Consequently, I would find it satisfying both the preserving and enhancing limbs of Article 50.

- 9.16 For the reasons I have outlined in 9.13-15 I conclude that the second reason for refusal cannot be sustained.

### **RECOMMENDATION**

- 9.17 I recommend that the appeal be allowed and that planning permission be granted for the change of use including a new ground floor façade subject to the following conditions.
- (1) Before the change of use hereby permitted is commenced the ground floor façade shall be constructed in accordance with the detailed proposals shown on drawing AW317WD01 received by the Commission on 24 November 1998.
  - (2) There shall be no gaming and amusements of a sessional nature and the premises shall be used only for the playing of amusement with prizes machines together with ancillary snack bar and ancillary retail sales.
  - (3) The use hereby permitted shall not commence until self-closing front doors have been installed and sound proofing carried out in accordance with a scheme to be submitted to and approved in writing by the Department.
  - (4) No music, public address system or any other amplified sound shall be used other than background music which is not to be audible outside the premises.
  - (5) The front windows of the premises shall at all times contain a display.

- (6) The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

**G R B FARRINGTONDATE: 14 December 1998**

**List of Appearances**

Department of the Environment (NI):-	Mr P Hamill, Planning Service; Mr M Jeffries, Planning Service; and Mr A Turkington, Environment and Heritage Service.
Appellant:-	Mr D Morgan QC instructed by T G Menary & Co Solicitors, 19 Windsor Avenue, Lurgan, who called Mr J Casey, Urban and Rural Planning Associates; Mr A Wheeler, Chartered Architect; and Mr I Perris, Oasis Ltd.
Belfast City Council:-	Dr D Singleton, Chartered Town Planner; Mr P McNaney, Director of Legal Services; and Mr K Crothers, Chartered Surveyor.

**List of Documents**

Department of the Environment (NI):-	“A” Mr Hamill’s statement of evidence; “B” Land use survey; “C” Photographic appendix “D” Planning history map and schedule; “E” Loose photographs (2) of existing Joyland premises.
Appellant:-	“F” Mr Casey’s statement of evidence; “G” NI Planning Appeal Decision (1995/A236; 1996/A145; 1997/A100); “H” GB Planning Appeal Decisions 1993-1998; “I” Copy of letter dated 5 November 1998 from Buttery and Watson; “J” Mr Wheeler’s statement; “K” Mr Wheeler’s computer simulation and photographs; “L” 1:20 scale drawing of revised shopfront elevation (annotate) compared with KFC façade; “M” Planning permission (Z1945/85); listed building consent (Z/86/0509) and consent for advertisement (Z/1960/85) for KFC façade; “N” Mr Perris’s CV; and “O” Mr Perris’s statement
Belfast City Council:-	“P” Dr Singleton’s statement; “Q” Mr Crother’s statement.

**Post-hearing Submission (received 24 November 1998).**

Revised ground floor façade (drawing number AW317WD01) agreed between the Divisional Planning Office, Built Heritage and the appellant received under cover of a letter dated 24 November 1998.





**CARSON  
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Oasis Retail Services Limited  
Oasis House  
Mallusk Drive  
Newtownabbey  
BT36 4GX

Our ref: EC/AL/09486/0015  
Your ref:

20 May 2016

**RECORDED DELIVERY**

Dear Sirs

KX 8074 1169 6GB

Our Client: Project Goat Limited  
Premises: 17/23 North Street, Belfast

Please find enclosed Form 3 Notice under the Business Tenancies Order by way of service upon you.

Yours faithfully

Carson McDowell LLP  
emma.cooper@carson-mcdowell.com

FORM 3

BUSINESS TENANCIES (NORTHERN IRELAND) ORDER 1996  
(S.I. 1996/725 (N.I.5)) ("the Order")

**Landlord's Notice to Determine Business Tenancy  
under Article 6 of the Order**

Name and address of tenant: **Oasis Retail Services Limited, Oasis House, Mallusk Drive,  
Newtownabbey, BT36 4GX**.....

Premises situate at and known as: .

**19 North Street, Belfast situate on the ground floor of the building known as 17/23 North  
Street, Belfast**  
.....

Name and address of landlord: **Project Goat Limited,** .....

**49 Berkely Square, London, W1J 5AZ**.....

1. I/We hereby GIVE YOU NOTICE TERMINATING YOUR TENANCY  
ON THE DAY OF 200

2. I am/We are willing that the tenant should have a new  
tenancy on the following general terms:-

The property proposed to be comprised in the tenancy (being either the whole or part of the property  
comprised in the current tenancy) (*here state the property*):

**19 North Street, Belfast situate on the ground floor of the building known as 17/23 North  
Street, Belfast**

The proposed rent to be payable under the new tenancy:

**£17,500 per annum**

The proposed date of commencement and duration of the new tenancy:

**18 months from 1<sup>st</sup> April 2016**

The other terms of the new tenancy: .....

**..Same terms as the lease dated 1<sup>st</sup> October 1992 between A.S. & D Enterprises Limited (1)  
Joyland Amusements (NI) Limited (2)**  
.....  
.....  
.....  
.....

OR

2. I/We would oppose a tenancy application by the tenant on the following ground(s) mentioned in Article 12 of the Order:-

.....

.....

.....  
YOU SHOULD SEEK PROFESSIONAL ADVICE ON THIS NOTICE AS SOON AS POSSIBLE.

Your particular attention is drawn to Articles 6, 10, 12 and 13 and 14 to 15 of the Order

Signed  ..... Landlord/ Agent of landlord

Date 20 May 2015 .....







**APPROVAL OF PLANNING PERMISSION**

**Planning Act (Northern Ireland) 2011**

Application No: **LA04/2018/0098/F**

Date of Application: **14th December 2017**

Site of Proposed Development: **73-75 North Street  
Belfast  
BT1 1NL**

Description of Proposal: **Change of use from retail to amusement arcade and alterations to shop front**

Applicant: Oasis Retail Services Ltd  
Address: Oasis House  
Mallusk Drive  
Newtownabbey  
BT36 4GX

Agent: MBA Planning Ltd  
Address: 4 College House  
Citylink Business Park  
Belfast  
BT12 4HQ

Drawing Ref: 01, 02, 03, 04

The Council in pursuance of its powers under the above-mentioned Act, hereby

**GRANTS PLANNING PERMISSION**

for the above-mentioned development in accordance with your application subject to compliance with the following conditions which are imposed for the reasons stated:

1. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

Reason: As required by Section 61 of the Planning Act (Northern Ireland) 2011.

**Informatives**

1. **This approval should be read in conjunction with the Legal Agreement under Section 76 of the Planning Act (Northern Ireland) dated 13<sup>th</sup> April 2022.**



2. CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT (NORTHERN IRELAND)  
2011

The applicant is advised to ensure that all plant and equipment used in connection with the development is so situated, operated and maintained as to prevent the transmission of noise to nearby retail accommodation.

Should any unforeseen ground contamination be encountered during the development, and in order to protect human health, all works on the site should immediately cease. Belfast City Council should be informed and a full written risk assessment in line with current government guidance (Model Procedures for the Management of Land Contamination-CLR11) that details the nature of the risks and any necessary mitigation measures and verification (if required) should be prepared and submitted for appraisal.

3. AMUSEMENT PERMIT

In accordance with the Betting, Gaming, Lotteries and Amusement (Northern Ireland) Order 1985, the applicant must apply to Belfast City Council, Building Control for an application form to apply for an amusement permit.

4. The drawing refs referred to above correspond with those drawings submitted to the Authority in respect of this application and published to the Planning Portal NI on: 18/01/2018, Drawing Nos 01, 02, 03 and 04.

**Authorised Officer**

**Dated: 21<sup>st</sup> April 2022**





Chief Executives Department  
Building Control



Belfast  
City Council

Our reference:

Being dealt with by: Stephen Hewitt

Your reference:

Ext: 2435

Date: 9 April 2018

Belfast Planning Service  
The Cecil Ward Building  
4-10 Linenhall Street  
Belfast BT2 8BP

Dear Sirs

**Location:** 73-75 North Street, Belfast, BT1 1NL  
**Proposal:** Change of use to amusement arcade from retail use (relocation of existing amusement arcade from 19 North Street) and alterations to shop front.

The Service has assessed the above Planning application against the five criteria relating to the suitability of a location for an amusement arcade (that is for the granting of an amusement permit), given in the Council's Amusement Permit Policy which was adopted by Council on 1 May 2013.

The Policy, as agreed through formal consultation with DOE (NI) Planning, is now a material consideration for Planning Service in determining planning applications for amusement arcades in Belfast.

Our comments against each of the assessment criteria are as follows:

**(a) Retail vibrancy and viability of Belfast:**

This application involves the relocation of an existing amusement arcade on the same street, from 19 North Street to 73-75 North Street. The application site is a vacant retail unit, formerly occupied by Bannon's home furnishings.

The application premises are situated within the Belfast City Centre Retail Core as defined in the draft Belfast Metropolitan Area Plan 2015 (dBMAP). It is bordered on one side by an entrance to first floor offices and on the other by the 'Money Shop'. The proposal would not therefore break up a continuous shopping frontage.

However, the Council's Permit Policy indicates that, outside of renewal applications, there is a presumption against granting permits for amusement arcades in the Retail Core unless they are related to a major, retail-led mixed use development or an upper storey development. Viewed in this context the application runs contrary to the Council's Amusement Permit Policy.

Notwithstanding the above it is noted that the application relates to the relocation of an existing amusement arcade at 19 North Street, the necessity for which is linked to a wider regeneration

Stephen Hewitt  
Building Control Manager

Ian Harper  
Building Control Manager

Belfast City Council, Chief Executive's Department  
Ground Floor, Cecil Ward Building, 4-10 Linenhall Street, Belfast BT2 8BP  
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INVESTORS  
IN PEOPLE

initiative for this northeastern part of the City Centre. This requirement to relocate may be a factor the Licensing Committee wish to consider should an application for an amusement permit be made to the Council.

***Does not comply with this criterion.***

**(b) Cumulative build-up of amusement arcades in a particular location:**

In addition to the existing Oasis Gaming Centre arcade at 19 North Street, which this application seeks to relocate, there is another amusement arcade located nearby at 13 North Street. In the desire to promote retailing in the City Centre the Council is keen to avoid a clustering of such uses at a given location. Whilst the proposed arcade at 73-75 North Street may be in the general vicinity of the existing premises at 13 North Street it is not located on the same commercial frontage as this existing arcade.

***Complies with this criterion.***

**(c) Impact on the image and profile of Belfast:**

The application premises have no neighbouring property which is a tourism asset, nor are they located at a Gateway location.

***Complies with this criterion.***

**(d) Proximity to residential use:**

(i) - predominantly residential in character

The application premises are located at ground-floor level, along the commercial frontage of North Street, where there is a mix of uses including cafes, restaurants, offices and retail units.

The application premises are located inside the Retail Core, and this area can therefore be viewed as a 'mixed use' area and not one that is predominantly residential in character.

(ii) – non-residential property that is immediately adjacent to residential property

There are no residential properties immediately adjacent to the premises.

***Complies with this criterion.***

**(e) Proximity to schools, youth centres, and residential institutions for vulnerable people:**

There are no schools, youth centres, or residential institutions for vulnerable people within 200m of the application premises.

***Complies with this criterion.***

Stephen Hewitt  
**Building Control Manager**

Ian Harper  
**Building Control Manager**

**Belfast City Council**, Chief Executive's Department  
Ground Floor, Cecil Ward Building, 4-10 Linenhall Street, Belfast BT2 8BP  
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## **Conclusion**

The Building Control Service considers that the application premises do not comply with all assessment criteria for the suitability of the location as laid down in Belfast City Council's Amusement Permit Policy.

As with any application for an amusement permit it will be considered on its own merits and it will be a matter for the Licensing Committee to take into account any matter which it deems relevant when assessing any application against the criteria laid down in the Policy.

Please do not hesitate to contact me should you require any further information.

Stephen Hewitt  
Building Control Manager

Stephen Hewitt  
**Building Control Manager**

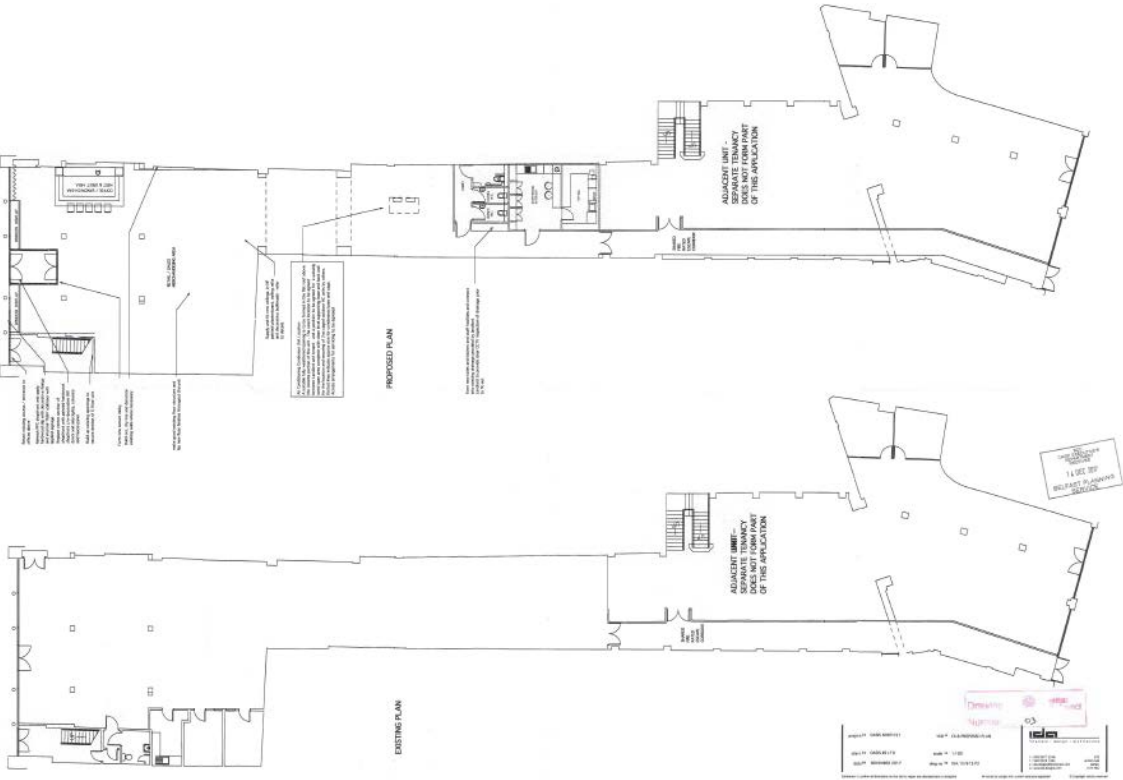
Ian Harper  
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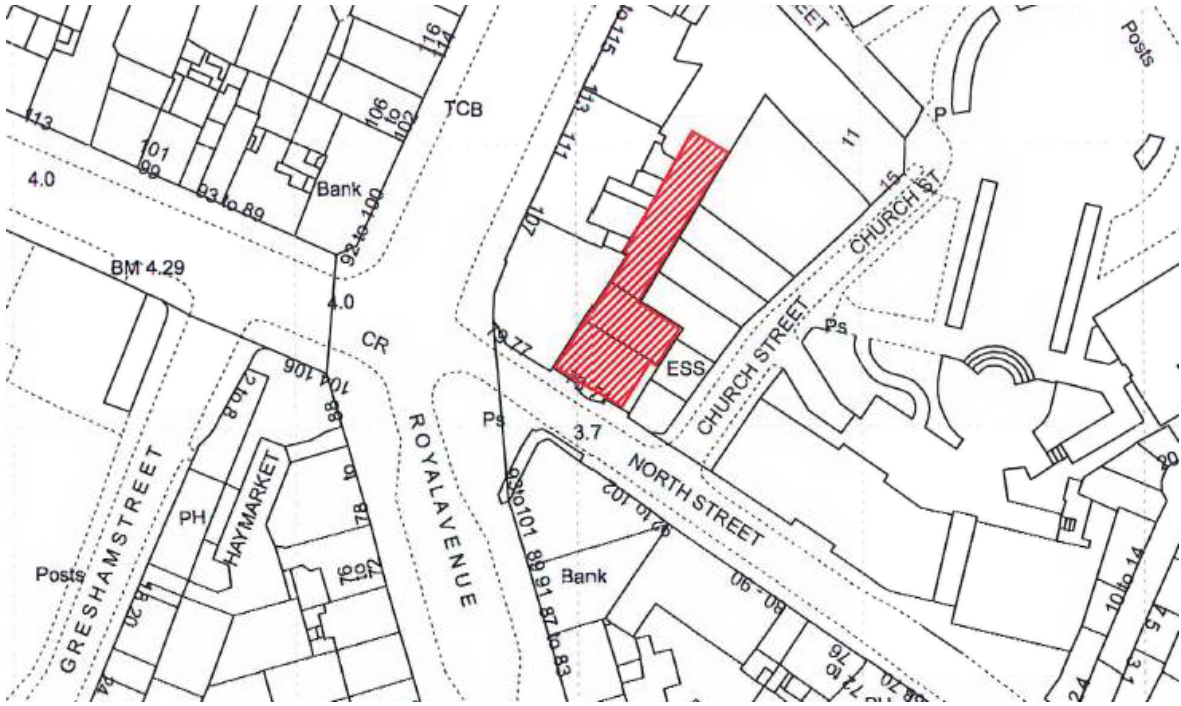


## Committee Application

Development Management Report	
<b>Application ID:</b> LA04/2018/0098/F	<b>Date of Committee:</b> 17 April 2018
<b>Proposal:</b>  Change of use from retail to amusement arcade and alterations to shop front	<b>Location:</b>  73-75 North Street Belfast BT1 1NL
<b>Referral Route:</b> Amusement arcade	
<b>Recommendation:</b>	Approval
<b>Applicant Name and Address:</b>  Oasis Retail Services Ltd Oasis House Mallusk Drive Newtownabbey BT36 4GX	<b>Agent Name and Address:</b>  MBA Planning Ltd 4 College House Citylink Business Park Belfast BT12 4HQ
<b>Executive Summary:</b>  Full planning permission is sought for the change of use from retail to amusement arcade and alterations to shop front.  The key issues in assessment of the proposed development include: <ul style="list-style-type: none"> <li>The principle of an amusement arcade at this location</li> <li>Impact on amenity</li> <li>Impact on traffic flow</li> <li>Acceptability of elevation changes on Conservation Area</li> <li>Impact on the setting of listed buildings</li> </ul> <p>The site is located within the city development limits for Belfast as designated within the Draft Belfast Metropolitan Area Plan 2004. It falls within the Cathedral Conservation Area and is in the curtilage of a listed building.</p> <p>DfI Historic Environment Division, DfI Roads, BCC Environmental Health and BCC Building Control were consulted. There are no objections to the proposal.</p> <p>No representations were received.</p> <p><b>Recommendation</b></p> <p>It is recommended that the application is approved.</p>	

Characteristics of the Site and Area	
1.0	<div><b>Description of Proposed Development</b><p>The proposal is for the change of use of the premises from retail an amusement arcade centre for persons of 18 years and over and is to include a lounge area, coffee making facilities, ancillary office space and toilet provision. It also includes alterations to the shop front.</p></div> <div><b>1.1 Existing and Proposed Floor Plans</b></div>
2.0	<div><b>Description of Site</b><p>The site is located at 73-75 North Street, near the junction with Royal Avenue in Belfast City Centre. It consists of a 3-storey commercial building. The premises is currently vacant and was formerly in use as a furniture showroom. It falls within the Cathedral Conservation Area and is within the curtilage of a listed building. The character of the area is representative of the city centre, composed primarily of retail use.</p></div>



2.1	<p><b>Site Location</b></p> 
<p><b>Planning Assessment of Policy and other Material Considerations</b></p>	
3.0	<p><b>Site History</b></p> <p>Z/1980/1718 - 71/73 LOWER NORTH STREET - SUB-DIVISION TO PROVIDE TWO SHOP UNITS - PERMISSION GRANTED</p> <p>Z/1987/2181 - 71/73 NORTH STREET - Refurbishment of shop/offices including new front façade - PERMISSION GRANTED</p> <p>Z/1991/2117 - 71/75 NORTH STREET - Erection of shop and offices - PERMISSION GRANTED</p> <p>Z/1992/2516 - 75 NORTH STREET - Reconstruction of a portion of existing building at rear - PERMISSION GRANTED</p> <p>Z/2010/1532/F – Demolition, redevelopment and part change of use of existing buildings to create mixed use development – PERMISSION GRANTED 11.10.12</p>
4.0	<p><b>Policy Framework</b></p>
4.1	<p>BUAP 2001  Draft Belfast Metropolitan Area Plan 2004  Version of Belfast Metropolitan Area Plan published 03.09.14  Strategic Planning Policy Statement (SPPS)  Planning Policy Statement 6: Planning, Archaeology and the Built Heritage</p> <ul style="list-style-type: none"> <li>- Policy BH11</li> <li>- Policy BH12</li> </ul> <p>DCAN 1: Amusement Centres</p>

<b>5.0</b>	<b>Statutory Consultees Responses</b>
5.1	None
<b>6.0</b>	<b>Non Statutory Consultees Responses</b>
6.1	BCC Environmental Health – no objection
6.2	BCC Conservation Officer – no objection
6.3	DfI Roads – no objection
6.4	DfC HED – no objection
<b>7.0</b>	<b>Representations</b>
7.1	The application has been neighbour notified and advertised in the local press. No comments have been received.
<b>8.0</b>	<b>Other Material Considerations</b>
8.1	None
<b>9.0</b>	<b>Assessment</b>
9.1	<u>Planning Policy</u>
9.2	Section 45 (1) of the Planning Act (Northern Ireland) 2011 requires regard to be had to the Development Plan, so far as material to the application and to any other material considerations. Section 6(4) states that where regard is to be had to the Development Plan, the determination must be made in accordance with the Plan unless material considerations indicate otherwise. The proposed site is located within the urban area of Belfast. The Belfast Metropolitan Area Plan 2015 (BMAP) has been quashed as a result of a judgement in the Court of Appeal delivered on 18th May 2017. As a consequence of this, the Belfast Urban Area Plan 2001 (BUAP) is now the statutory development plan for the area with draft BMAP remaining a material consideration.
9.3	<u>Principle of Amusement Arcade at Location</u>
9.4	Policy R1 of BMAP Plan Strategy refers to retailing in city and town centres. It states that non-retail development will be restricted in designated Primary Retail Cores (and Primary Retail Frontages) so that no more than 25% of the frontage of the shopping street(s) to which it relates is in non-retail use and no more than three adjacent units are in non-retail use.
9.5	According to the applicant, the proposed Oasis amusement arcade is relocating to the site from 19 North Street, which is to be demolished to facilitate the mixed use Royal Exchange development granted under Z/2010/1532/F. In this regard the proposal is not for a new amusement arcade but rather the relocation of an established facility. However, since planning permission runs with the land, a formal mechanism will be needed to make sure that the existing and proposed premises do not operate concurrently as amusement arcades. The applicant has been asked to put forward a mechanism. One option would be a Section 76 Planning Agreement to require that on first occupation of the new premises, the existing premises at 19 North Street shall not at any time be used as an amusement arcade.

	The recommendation of this report is subject to an appropriate mechanism being put in place.
9.6	The retail composition of North Street currently falls below the 25% R1 threshold. The relocation of the non-retail use floorspace, subject to the appropriate mechanism, will therefore not materially harm the implementation of this policy. However, once the Royal Exchange scheme is implemented the amount of non-retail frontage on North Street will reduce considerably. It is therefore considered that there will be no harmful impact upon the retail character of the area by the proposed change of use.
	<u>DCAN 1 Impact on Amenity/Character of Surroundings</u>
9.7	DCAN 1 states that the factors which call for consideration on a planning application for an amusement centre are its effects on the amenity and character of its surroundings, and its effects on road safety and traffic flow.
9.8	DCAN 1 states that the effects on amenity and the character of the surroundings depend on the location of the proposed amusement centre in relation to other development, its appearance, the kind of amusement to be provided, the noise likely to be produced and the hours of operation. As regards the location, amusement centres are not normally acceptable near residential property nor are they good neighbours for schools, churches, hospitals, or hotels. They are out of place in conservation areas or other places of special architectural or historic interest, except perhaps where these cover a really wide area. In areas where one amusement centre may not be out of place, it would be permissible to take into account the effect of larger numbers on the character of a neighbourhood.
9.9	The proposed location for the amusement centre is near to the retail core of Royal Avenue and adjacent to a mixture of uses including commercial offices, cafes and restaurants. There is no residential use in the immediate vicinity. Both the University of Ulster Belfast campus and St Anne's Cathedral are considered sufficiently distanced from the site to be affected by the proposal. While the site does fall within a Conservation Area as there are no significant changes to the appearance of the building it is not considered that there will be any adverse impact on the character of the area.
9.10	The Council's Environmental Health Unit was consulted for comments about the proposal in terms of potential adverse impact due to excessive noise etc. It has no objection to the proposal.
9.1	<u>Impact on Traffic Flow</u>
9.12	DCAN 1 states that consideration is called for where the premises front onto a busy traffic route or are near an awkward road junction, or are so sited that many visitors arriving on foot will have to cross a busy road or use an inadequate footway.
9.13	The site is located at the top end of a one way street and near to the pedestrianised part of Royal Avenue. It is not considered that customers of the premises would be in any excessive danger in accessing the venue.
9.14	No dedicated parking is provided within the scheme. The site will rely on street parking and the multi-storey provision in nearby facilities such as Castlecourt and Hi-Park. It is considered that these car parks will provide ample parking provision for staff and customers of the premises, which is in a central location.
9.15	DfI Roads was consulted about the proposal and have no objection.

9.16	<u>Acceptability of Elevation Changes on Conservation Area</u>
9.17	<p>The proposed shopfront alterations comprise a painted hardwood shopfront with decorative hardwood doors, side lights, columns and fascia panel. The Council's Conservation Officer was consulted for comment and advised:</p> <p><i>The host building dates from 1992-93 and is of limited architectural / historic merit.</i></p> <p><i>The existing building – like it or not – is an architecturally unified composition – governed by a single design idea.</i></p> <p><i>A traditional style / Victorian shopfront is therefore somewhat contrary to visual and architectural unity – it is contextually inappropriate to the host building.</i></p> <p><i>However it is appropriate to the area and contributes to the reading of the area in legibility terms as being a Victorian / Edwardian commercial district.</i></p> <p><i>It also provides a distinctive base to the building and is keeping with the traditional architectural paradigm of horizontal subdivision of facades into base, middle and attic. In this respect it would be better to extend the treatment to the final bay of the ground floor – i.e. as per the character of the Conservation Area – in part ascribed by buildings with visually unified bases – it would be preferable if the treatment was extended to the entirety of the base of the building.</i></p> <p><i>Therefore, subject to this, on balance in my opinion the proposal is acceptable in terms of the wider character of the Conservation Area.</i></p>
9.18	The proposed alterations to the shopfront are considered acceptable and compliant with BH 12 of PPS6. As the proposed alterations are minor and do not involve any structural demolition there is no requirement for additional conservation area consent.
9.19	<u>Impact on Setting of a Listed Building</u>
9.20	Historic Environment Division (HED) was consulted to consider whether the application for 73-75 North Street, Belfast affects HB26/50/068 103-107 Royal Avenue & 77-79 North Street, Belfast a Grade B1 listed building of special architectural or historic interest as set out in Section 80 and protected under the Planning Act (NI) 2011. It responded that it is content with the change of use and with the alterations to the shop. The proposal is therefore considered compliant with Policy BH11 of PPS6 – Development Affecting the Setting of a Listed Building.
9.21	<u>Building Control Consultation</u>
9.22	The Council's Amusement Permit Policy is a material consideration in determining applications for amusement arcades in Belfast. Amusement Permits are issued by the Council's Building Control (BC) section. In its consultation response BC advised that the proposal does not comply with the assessment criteria relating to retail vibrancy and regeneration of Belfast. The proposal did, however, comply with the criteria relating to the cumulative build-up of amusement arcades in a particular location, the impact on the image and profile of Belfast, proximity to residential use and proximity to schools, youth centres and residential institutions for vulnerable people.
9.23	BC advised that should an Amusement Permit application come before the Licensing Committee, consideration will be given to the fact that the application relates to the relocation of an existing amusement arcade at 19 North Street and that it will be a matter for

	the Licensing Committee to take into account any matter which it deems relevant when assessing any application against the criteria laid down in the Policy.
9.24	Having considered the Amusement Permit Policy, in view of the planning issues taken into account under the SPPS and DCAN 1, it is considered that the proposal is acceptable, provided that a mechanism is put in place to ensure that the existing and proposed amusement arcade premises do not operate concurrently.
9.25	<u>Conclusion</u>
9.26	Subject to a mechanism to ensure that the existing and proposed premises do not concurrently operate as amusement arcades, the proposed change of use to amusement arcade and external alterations are considered acceptable. Delegated authority is sought for the Director of Planning and Place to approve the application subject to conditions and the appropriate mechanism being put in place.
<b>10.0</b>	<b>Summary of Recommendation: Approval</b>
<b>11.0</b>	<p><b>Conditions</b></p> <ol style="list-style-type: none"> <li>1. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.</li> </ol> <p>Reason: As required by Section 61 of the Planning Act (Northern Ireland) 2011.</p> <p><b>Informatives</b></p> <ol style="list-style-type: none"> <li>1. CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT (NORTHERN IRELAND) 2011</li> </ol> <p>The applicant is advised to ensure that all plant and equipment used in connection with the development is so situated, operated and maintained as to prevent the transmission of noise to nearby retail accommodation.</p> <p>Should any unforeseen ground contamination be encountered during the development, and in order to protect human health, all works on the site should immediately cease. Belfast City Council should be informed and a full written risk assessment in line with current government guidance (Model Procedures for the Management of Land Contamination-CLR11) that details the nature of the risks and any necessary mitigation measures and verification (if required) should be prepared and submitted for appraisal.</p> <ol style="list-style-type: none"> <li>2. AMUSEMENT PERMIT</li> </ol> <p>In accordance with the Betting, Gaming, Lotteries and Amusement (Northern Ireland) Order 1985, the applicant must apply to Belfast City Council, Building Control for an application form to apply for an amusement permit.</p>

<b>Notification to Department (if relevant)</b>
N/A
<b>Representations from Elected members:</b>
N/A



Neutral Citation No: [2018] NICA 32

Ref: DEE10675

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

*Delivered: 24/9/2018*

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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2014 No 62897/01/A01

BETWEEN:

OASIS RETAIL SERVICES LIMITED

Appellant;

-and-

BELFAST CITY COUNCIL

Respondent.

BELFAST LEISURE COMPANY LIMITED

First Notice Party;

-and-

HAZELDENE ENTERPRISES LIMITED

Second Notice Party.

IN THE MATTER OF AN APPLICATION BY OASIS RETAIL SERVICES LIMITED FOR LEAVE TO APPLY FOR JUDICIAL REVIEW IN RESPECT OF A DECISION MADE BY THE BELFAST CITY COUNCIL (LICENSING COMMITTEE) ON 14 MARCH 2014 GRANTING AN AMUSEMENT PERMIT TO BELFAST LEISURE COMPANY LIMITED AT 24/28 BRADBURY PLACE, BELFAST

AND IN THE MATTER OF AN APPLICATION BY OASIS RETAIL SERVICES LIMITED FOR JUDICIAL REVIEW OF A DECISION MADE BY BELFAST CITY COUNCIL (LICENSING COMMITTEE) ON 6 OCTOBER 2014 GRANTING AN AMUSEMENT PERMIT TO HAZELDENE ENTERPRISES LIMITED FOR PREMISES AT 25/41 BOTANIC AVENUE, BELFAST

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Before: Sir John Gillen, Deeny LJ & Treacy LJ

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## **DEENY LJ (delivering the judgment of the court)**

[1] This is an appeal by Oasis Retail Services Limited (“Oasis”) against the judgment and orders of Maguire J dated 13 January 2017. That judgment related to two different decisions of the Licensing Committee of Belfast City Council (“the Council”) granting amusement permits in respect of two quite different applications but in the same area of Belfast.

[2] The first application of Oasis was filed with an Order 53 statement on 17 June 2014. The Order 53 statement records that Oasis is “a company owning and operating 13 amusement arcades in Northern Ireland. Included in this number are premises at the corner of Nos. 1-7 Donegall Road and 14 Shaftesbury Square in Belfast. The applicant has been operating amusement arcades since 1968.” Oasis sought an order of certiorari to bring into the High Court and quash the decision of the Council dated 19 March 2014 to provisionally grant an amusement permit to “Mavericks” a trading name for Belfast Leisure Company Limited for premises at 24-28 Bradbury Place, Belfast which is stated to be about 80 metres from the appellant’s premises identified above.

[3] On 27 November 2014 Oasis brought a further application for leave pursuant to Order 53 with regard to the decision of the same Committee and Council to grant an amusement permit on 6 October 2015 to Hazeldene Enterprises Limited (Hazeldene). This was in respect of premises at 25-41 Botanic Avenue, Belfast, the former Arts Theatre. It was said to be two minutes from the appellant’s premises and again certiorari was sought.

[4] These two leave applications were adjourned a number of times and then ultimately listed before Maguire J together on a rolled up basis i.e. he would decide whether leave should be granted for judicial review in either case and, if leave was granted, whether the court should grant the relief sought. On 13 January 2017 the judge upheld the decision of the Council with regard to Bradbury Place and refused leave to apply for judicial review in respect of that permission on the ground of delay on the part of Oasis.

[5] The judge did grant leave to apply for judicial review in respect of the Botanic Avenue permission but dismissed the challenge substantively saying the following at [101] (iii):

“The court simply is not satisfied that the respondent failed to consider the issue of the impact of cumulative impact/proliferation of permits in relation to the character and amenity of the area or the issue of the fitness of the second respondent to hold a permit. The ancillary issues referred to above,

such as the failure to grant an adjournment, are also dismissed.”

[6] The judge went on to indicate that he would have substantially have decided the Bradbury case in the same way even if there had been no delay.

[7] Oasis appeals both of these decisions and the consequent orders to this court. Before us the appellant was represented by Liam McCollum QC with Hugh O'Connor. The respondent was represented by David Scoffield QC with Ms Denise Kiley. The first named notice party was represented by Philip McAteer and the second named notice party by Stewart Beattie QC. We are obliged to counsel for their learned oral and written submissions.

### **Statutory and policy background**

[8] The statutory and policy background to these two amusement permits is admirably set out by Maguire J in his learned judgment. We are content to set out what he said in this connection.

“[4] The statutory regime at issue in these proceedings is that relating to the power of the respondent to grant or refuse amusement permits. This is governed by the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (“the 1985 Order”). Articles 109-121 deal specifically with amusement permits. Article 111 of the 1995 Order outlines the process for making an application for an amusement permit. Article 111(2) provides:

‘Subject to paragraphs (3) to (4B), where an application is made for the grant of an amusement permit, the district council, after hearing representations, if any, from the sub-divisional commander upon whom notice is required by paragraph (1) to be served, -

- (a) may grant the amusement permit; or
- (b) may refuse to grant the amusement permit.’

Paragraph 3 of Article 111 outlines the circumstances in which a district council shall refuse an application for a grant of a permit. It provides:

‘A district council shall refuse an application for the grant of an amusement permit, unless it is satisfied –

- (a) in a case where there is in force a resolution passed by the council as mentioned in Article 110 (2) (a) or (b) which is applicable to the premises to which the application relates, that the grant of the permit will not contravene that resolution; and
- (b) that the applicant is a fit person to hold an amusement permit; and
- (c) that the applicant will not allow the business proposed to be carried on under the amusement permit to be managed by, or carried on for the benefit of, a person other than the applicant who would himself be refused the grant of an amusement permit; and
- (d) [repealed]
- (e) that, where the application is for the grant of an amusement permit for the purposes of Article 108 (1) (ca), the premises for which the permit is sought are premises used wholly or mainly for the provision of amusements by means of gaming machines.’

[5] Notably –

- (i) There is no statutory obligation requiring the decision maker to consider the effect of a grant of a permit on the surrounding neighbourhood;
- (ii) There is no provision requiring the decision maker to consider the issue of adequacy of demand for premises of this type in the locality – a requirement commonly found in other licencing schemes.

#### The Respondent's Policy

[6] The respondent on or about 1 May 2013 put in place what it describes as its Amusement Permit Policy ('the policy'). It runs to some 15 pages. This notes that applicants for permits are normally required to first obtain planning permission for an amusement arcade before applying for an amusement permit. The policy is described as designed 'to serve as a guide for Elected Members, Council officers, applicants and the wider public on applications for amusement permits in the Belfast City Council area'. The idea behind the policy is to introduce greater clarity, transparency and consistency to the decision making process.

[7] The policy notes that the ground it occupies overlaps in terms of many of the issues, such as location, structure, character and effect on neighbours, with planning considerations. While the council would be slow to differ from the views of the planning authority, it was entitled to do so and was not bound to accept the decision of the authority. The policy outlines five criteria which the council will typically consider when assessing the suitability of a location for a proposed amusement arcade. Nonetheless, it is indicated that the council will take into account any matter which it deems relevant. Moreover, it is stated in the policy that '[t]he Council may also depart from the policy where it appears appropriate or necessary, although it is envisaged that this will only happen in exceptional circumstances'.

[8] The objectives of the policy are stated to be to:

- '1. Promote the retail vibrancy and regeneration of Belfast.
2. Enhance the tourism and cultural appeal of Belfast by protecting the image and built heritage.
3. Support and safeguard residential communities in Belfast.
4. Protect children and vulnerable persons from being harmed or exploited by gambling.
5. Respect the need to prevent gambling from being a source of crime and disorder.'

[9] To meet the above objectives the Council when determining applications will assess each application on its own merits. However, in particular, regard will be had to the legal requirements of the 1985 Order. Four matters in this connection are referred to in the policy. The first encompasses the character, reputation and financial standing of the applicant. The second relates to the nature of the premises and the activity proposed. The third involves consideration of the opinion of the police. The fourth requires consideration of the submissions from the general public. Under each of these heads, the policy contains passages dealing with justification and clarification. Unsurprisingly, the first factor has the aim of ensuring that players are protected from illegal or unscrupulous operators. As regards the second, specific reference is made to ensuring that the nature of the premises proposed is appropriate for the location in question. This is said to involve "careful consideration of the following matters: how premises are illuminated; the form of advertising and window display; and how notices are displayed on the premises". The aim is to ensure that the premises do not openly encourage gambling. In relation to the third factor, the view of the police is said to command significant weight both as to the assessment of the

applicant and as to the location of the premises. The suitability of the area for an amusement arcade is expressly a matter on which the police view is to be ascertained. It is envisaged that the police opinion would be expressed by the completion of a short questionnaire on the applicant and the premises. Taking into account the views of the public, the fourth factor, is said to be consonant with the process of advertising the receipt of applications in the press with a view to enabling those who wish to respond to do so. Reference is made to the council carefully considering submissions received, 'from neighbouring properties ... residents, businesses or any other interested party'.

[10] The criteria for assessing the suitability of a location are, under the policy, five-fold. The following will typically be used in the assessment:

- (a) The impact on the retail vitality and viability of Belfast City.
- (b) The cumulative build-up of amusement arcades in a particular location.
- (c) The impact on the image and profile of Belfast.
- (d) The proximity to residential use.
- (e) The proximity to schools, youth centres and residential institutions for vulnerable people.

[11] Each of the above criteria is in the policy explained in more detail. Applications affecting the retail vitality and viability of Belfast City Centre are subject to strict control. It is unnecessary to say more about this as neither of the applications with which the court is concerned fall into this category. Under the heading of cumulative build-up, it is stated that 'the Council will limit the number of amusement permits it grants to one per shopping or commercial frontage and one per shopping centre'. This is reinforced by the statement in the policy that 'where this number of permits has already been granted, or exceeded, no more amusement permits will be

considered'. By way of justification and/or clarification, the policy indicates that as the council wish to promote retailing, it is anxious to avoid a cumulative build-up or clustering of amusement arcades in a particular location. Some definition is given in the policy as to what a shopping or commercial frontage amounts to. It can, the policy explains, be defined as 'a group of mainly ground-floor businesses that shares a continuous frontage and which is usually separated from other frontages by a different road or street name'. Reference is also made to a Planning Guidance Note DCAN 1 which refers to the need to consider the cumulative impact in terms of taking into account the effect of large numbers on the character of the neighbourhood as well as to PPS 5 on Retailing and Town Centres which refers to a requirement to avoid a 'clustering' of non-retail uses. The other three criteria in the list above are all largely self-explanatory. Under (c) *supra* it is stated that amusement permits would not be granted at locations that are regarded as tourism assets or as gateway locations in Belfast City Centre. In respect of (d) in the list reference is made to the council seeking to prevent amusement arcades opening in predominantly residential areas. Finally, as regards criterion (e), it is noted that the council believes that a precautionary approach is required in respect of applications made near locations where children, young persons and vulnerable people congregate.

[15] DCAN1 is a document which was promulgated by the Department of the Environment for Northern Ireland in 1983. It relates to the subject of Amusement Centres and provides planning advice and guidance. It consists of some 9 paragraphs. At paragraph 3 it refers to factors which call for consideration on a planning application for an amusement centre. The first factor mentioned is 'its effects on the amenity and character of its surroundings'. This is expanded on at paragraph 4 where reference is made to such effects which are described as diverse. The relevant passage goes on:

‘They will usually depend on the location of the proposed amusement centre in relation to other development, its appearance, the kind of amusements to be provided, the noise likely to be produced and the hours of operation’. Later in the same paragraph it is commented that “[i]n areas where one amusement centre may not be out of place, it would be permissible to take into account the effect of larger numbers on the character of a neighbourhood”. At paragraph 5, in the context of towns where there is no provision for areas for amusement or entertainment, the advice note goes on “amusement centres are usually best sited in districts of mixed commercial development’.”

### **Grounds of appeal**

[9] The appellant’s grounds of appeal are as follows:

[10] The principal ground of appeal was that the Council had been wrongly advised by officials and an expert retained by them as to the correct interpretation of the Council’s policy to avoid cumulative build-up of amusement arcades in a particular location. The appellant contended that the Committee had been misled by being told that this criterion was complied with because: “there are no other amusement arcades on this commercial frontage”. That was a report of Suzanne McCreesh, Senior Council Environmental Health Officer, dated 4 September 2013, (page 68, trial bundle 1) dealing with criterion 2 of the policy. It was contended that the Council had received such erroneous advice at both the Bradbury hearing and at the Botanic hearing.

[11] The judge saw that there was force in this application and concluded that the interpretation of the policy put forward by Oasis was the correct one i.e. that it could not be properly limited to a consideration of whether or not there was already an arcade on a commercial frontage. But he concluded at [91] that he was not persuaded “that it has been established on the balance of probability that the committee members failed to consider the case of the objector which was put to them in relation to the proliferation of permits and the accumulative build-up of permitted premises in the area. In the Bradbury case they had been addressed by a planning consultant. In the Botanic case they had been addressed by senior counsel. The court has no reason to believe that the members of the committee would either not have been interested in the submissions made to them or could not appreciate the



disadvantages which might arise in an area where the number of permits was proliferating. On the other hand it is not difficult to understand that the committee, while fully appreciating that in an area like this where there may exist evidence of a clustering of permits, might take the view that, in itself, this would not necessarily be fatal to an application for a further permit as the area may nonetheless be viewed as a mixed one not unsuitable for such activity. “

[12] With regard to the Botanic application only Oasis in its written skeleton argument emphasised the number of machines which were to be operated at the Botanic premises, if permitted. Oasis submitted that this issue of the numbers of the machines in a particular arcade was a material consideration, relevant to the decision of the Council but which had not been taken into account by it.

[13] Thirdly, and again relating only to the Botanic permission, Oasis contended that there had been procedural unfairness and bias in the hearing of the application in this regard on 6 October 2014. They were critical of a report which had been furnished to the Council. They said that their complaint of the unfitness of the application was not properly dealt with. The planning consultant was excluded from the meeting because they were only allowed three persons whereas five persons on behalf of the applicant were allowed into the hearing. Most importantly they complain that, contrary to a timetable which had been set up in advance the applicant, Hazeldene, had been permitted to produce “a whole series of surveillance reports” on a number of the objector’s premises at the last minute. Oasis sought but was refused an adjournment on this ground. Other matters were not pursued before us.

[14] It is convenient to deal with these three issues separately. In the case of each the court has taken into account the submissions of the applicant and of the respondents and the judgment of the court below.

[15] The court must also take into account with regard to the Bradbury Place appeal the finding of the learned judge that there was delay on the part of the then objector, Oasis, which separately grounded a refusal of its judicial review application.

### **Cumulative impact**

[16] A central thrust of the submissions of the appellant and Mr McCollum’s skilful exegesis of the policy and history of the matter, was that the Committee took into account an erroneous understanding of one of their five key criteria. They failed, in his submission, to appreciate that they had to consider the cumulative impact of the number and scale of additional permissions for amusement arcades. To put it another way they unlawfully fettered their discretion because they were, wrongly, advised as to the proper application of the policy. Support for his contention is to be found at several places in the papers. The minutes of the Special

Licensing Committee meeting held on Monday 6 October 2014 are to be found at trial bundle 2 pages 166ff. The Report of Council officers to the Committee is set out in extenso in the minutes.

[17] That report correctly records at para 2.34 that the Council in determining applications for amusement permits may take into account planning considerations but should be slow to differ from the views of the planning authority. The report goes on to address the five criteria in the Council's own policy which fell to be applied by the Committee on behalf of the Council.

At 2.39 we find the following.

“(b) Cumulative build-up of amusement arcades in a particular location: there are no other amusement arcades on this commercial frontage.

*Complies with this criteria.”*(sic) (emphasis added)

[18] The learned judge found at paragraphs [78] to [86] of his judgment that this was a misstatement of the policy. The presence or otherwise of another amusement arcade on a commercial frontage was a factor within assessing cumulative build-up but the reference to the Council was a strong one “which could be viewed as limiting criterion two and giving it a meaning restricting its application to the one per street frontage situation. The judge concluded that the policy, properly interpreted, required the issuing of the proliferation of permits and the effect of the same on the character and amenity of area to be more broadly considered.

[19] Having made that finding the judge proceeded to consider “whether the cumulative build up in the sense referred to by the court was considered by the respondent in these cases”. It is not now in dispute that the judge's view of the policy was correct. He was therefore required to consider whether the Council had been alerted to a correct view out of one of its own five criteria.

[20] He proceeded to consider that at paragraphs [87] to [91] and concluded that the court had not been persuaded on the balance of probabilities “that the Committee members failed to consider the case of the objector which was put to them in relation to the proliferation of permits and the accumulative build-up of permitted premises in the area”.

[21] With great respect, however, what the judge did not do was consider the other side of the coin - whether the Council Committee had taken into account a wrong interpretation of its policy constituting an irrelevant or improper consideration.

[22] If we go back to the *fons et origo* of modern judicial review, *Associated Provincial Picture Houses Limited v Wednesbury Corporation* [1947] 2 AER 680 one will

see that this is a necessary factor for the court to take into account. I quote from Lord Greene MR at page 682F:

“When an executive discretion is entrusted by Parliament to a local authority, what purports to be an exercise of that discretion can only be challenged in the courts in a very limited class of case. It must always be remembered that the court is not a court of appeal. The law recognises certain principles on which the discretion must be exercised, but within the four corners of those principles the discretion is an absolute one and cannot be questioned in any court of law.

What, then, are those principles? They are perfectly well understood. The exercise of such discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found, expressly or by implication, matters to which the authority exercising the discretion ought to have regard, then, in exercising the discretion, they must have regard to those matters. Conversely, if the nature of the subject-matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, they must disregard those matters. Expressions have been used in cases where the powers of local authorities came to be considered relating to the sort of thing that may give rise to interference by the court. ... For instance, a person entrusted with discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the matter that he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting ‘unreasonably’.”

[23] In this case we know that the Council was misled by its own advisers as to the meaning of one of its five key criteria. To lead to a quashing of the decision such an irrelevant consideration need not be the sole or dominant influence on the decision provided it is material and substantial: *De Smith Woolf and Jowell Judicial Review* 6-086 (1993): that is trite law. The correct question was not whether the Committee had also had the benefit, as the judge found, of the opinions of the planning consultant and the senior counsel acting for Oasis and the availability of location maps and

other information. The question was whether following the misleading opinion provided in writing to the Committee that was corrected at their meeting so that they correctly understood their own policy when they came to make a decision. As pointed out above the decision was not unanimous, certainly in the Botanic case.

[24] One therefore must look to see whether there was material to reach such a conclusion i.e. that the irrelevant and improper consideration had been excluded from their consideration as well as consideration given to the correct view of the policy advanced on behalf of the applicants.

[25] There is nothing in the judge's findings to justify such a conclusion. On the contrary he points out that the respondent did not in advance of the hearing before him file affidavit evidence, for example by the chairperson of the Committee, on the very point the court was now considering. Equally well he points out that the minutes of the respective meetings could have dealt with the issue but did not notwithstanding its obvious importance to the objector.

“While the court has read the affidavits of Mr Hewitt and Mr Downey filed by the respondent in this case they do not deal in a substantial way with a deliberative stage of the decision-making process”.

Given the judge's finding to that effect on a correct view of the law that is an end of the matter. He has found that an irrelevant and improper consideration i.e. the erroneous version of their policy recommended to them by their expert planner was put before them. It would be extraordinary if that did not carry weight with some or all of the Committee. They are, presumably, lay people in this regard and entitled, indeed obliged, to give weight to the expert advice they received. They were told, wrongly, that the cumulative impact criterion was met because there was no other arcade in the frontage. The judge did not find that there was evidence on the balance of probabilities that they had been disabused of that.

[26] We have taken into account the lucid submissions of Mr Scoffield QC for the Council. To a large extent they echoed the findings of the judge as summarised above and to be found in his judgment.

[27] One of the points relied on there is that the witness for Oasis, Ms Diana Thompson of MBA, a leading planning consultant correctly stated the law to them, as Mr McCollum QC did in the Botanic hearing. However one cannot expect the Council's Committee to have concluded that those two persons retained by the objector were right and the advice they themselves were getting from neutral officials and a planner was wrong. There would have really had to have been a minute, as the judge said, or an affidavit from the Committee to prove such a conclusion.

[28] A development control office's professional planning report was drawn to our attention, signed by Mr P Kelly, relating to this application. But it was disputed that that report was before the Committee. Consequent to the hearing confirmation of what was before the Committee was sought. Initially the City Council offered to provide an affidavit setting that out. They then withdrew that offer. This court directed that it did require an affidavit verifying what was before the Committee at the two applications. Through some breakdown in communication this direction was not actually complied with until Ms Nora Largey, on behalf of the City Council, swore an affidavit received by the court on 14 June 2018. It then transpired that the control officer's report included in the papers before the Committee related to a completely different application at 22 Shaftesbury Square. The report by P Kelly (which did not repeat the error about cumulative impact) was not before the Committee. Mr Scofield also sought to rely on the affidavit of Dr Tony Quinn, of Braniff Associates, a planning consultant who was advising the Council. He admits at paragraph 15 that, as recorded in the minutes, the way in which he approached it was to deal with the restriction of one arcade per commercial frontage or shopping centre. At paragraph 19 he asserts that cumulative build up "was considered within the context of all the criteria stated in the permit policy, together with other considerations brought before the Council, including those raised by objectors".

[29] The need for wider consideration partly stems from the Department's advice note DCAN1. At paragraph 22 Dr Quinn says:

"I do not accept that there is a requirement for me to specifically direct councillors of the Licensing Committee to the contents of an advice note prepared by and intended for use by the planning authority."

At paragraph 27 he says:

"In my experience I have never encountered a situation when DOE planning restricted the number of amusement centres on the basis of concerns for cumulative build up."

It is clear therefore that Dr Quinn was not, at the time of the hearing before Maguire J, resiling from his earlier erroneous view of the Department's policy. He was defending it.

[31] The conclusion that the Council's officers had not resiled from their earlier erroneous presentation of the policy on cumulative impact is supported most graphically by the Council's own submission at first instance. At that stage they were still adhering to Dr Quinn's view of the policy. That is why the judge had to make a ruling on the matter. As Gillen LJ said *ex arguendo* the Council had undergone a Damascene conversion from its earlier misapprehension of its own

policy. But that did not take place between the time of the letter of Suzanne McCreesh or the statement of policy by Dr Quinn and the decision of each Committee. It only took place after the hearing at first instance. Neither the written submissions of counsel at that time nor the pre-trial correspondence made the case that was now being made to this Court of Appeal.

[32] It can be seen therefore that consistent with the judge's findings of fact but on a correct view of the law it is clear that this Committee were misdirected as to law by their own advisors and that misdirection was not resiled from by the time they made the decision.

[33] We will consider the appropriate remedy for this in due course.

### **Numbers of machines**

[34] The second ground of appeal on behalf of Oasis has been outlined above i.e. that the Committee had not taken into account the number of machines to be operated at the Botanic premises. Oasis submitted that the number of machines was a material consideration. We consider this a well-founded submission. The impact on the character of location is bound to depend to a significant degree on the size and scale of a proposed new amusement arcade. A café or restaurant which wished to put 2 or 3 of these machines upstairs for the entertainment of some of their clientele would need to get a permit but they would be entitled to argue that this would have no impact on the character of the location. How can one say the same about the Hazeldene proposal here to make 240 such machines available at their Botanic Avenue premises? Mr Beattie QC for Hazeldene, with his customary good judgment and candour, did accept that such was the case. He acknowledged that the nature of the permit issued by the Council expressly provides a maximum number of machines to be permitted in an arcade. He further acknowledged that the Committee had not received advice from officials or experts on their behalf on this point.

[35] However, he was able to draw our attention to the minute of the meeting of 6 October 2014 dealing with his client's application. At page 180 of trial bundle 2 there is an extensive minute relating to his own submissions on behalf of his client to the Committee. In the concluding paragraph we find this:

"In response to a number of questions from the Members, Mr Beattie confirmed that the amusement arcade would, if licensed, operate from 9.00 am to 11.30 pm from Monday to Saturday and from 12 noon to 11.30 pm on a Sunday. In terms of any reduction in the number of gaming machines, he pointed out that the allocation of 227 machines had been based upon the available floor space and that it would be unlikely

that all of the machines would be in use at any one time. He added that, whilst the Police Service of Northern Ireland had objected to the number of gaming machines stipulated within the application for the Bingo Club Licence it offered no objection in relation to that proposed within the amusement arcade.”

[36] Mr Beattie therefore submitted that it was clear that the Committee had actually considered this aspect of his client’s application. The issue in law is whether the decision-maker failed to take into account a relevant consideration or took into account an irrelevant consideration. On the evidence here the Committee was alert to this factor. We therefore reject this ground of appeal on behalf of Oasis.

[37] The third ground of appeal have been set out at paragraph 13 above and relate to the issues of procedural fairness with regard to the meeting of 6 October 2014. We have considered the submissions of counsel with regard to this matter. Mr McCollum complained that he had not been granted an adjournment on one of several grounds set out in the minutes of the meeting at pages 167 and 168. One of those was that surveillance reports which had been submitted by Hazeldene had been accepted after the date stipulated by the Building Control Service. However, it is clear from the minute of the meeting that the Committee properly considered this application and refused it on the grounds that it did not attach any weight to the content of the late submissions of Hazeldene and that sufficient time had already elapsed and excessive time would be lost if the matter was adjourned. We agree with the learned judge’s finding on this matter.

[38] Oasis complains that they were only permitted to have three persons present at the Committee hearing but an officer of the Council avers on affidavit that he was not aware that they had a fourth person and that there would not have been a difficulty about her attending either. At most this was a misunderstanding and not a ground for quashing the decision.

[39] It is important for a Committee to follow due process, particularly when they are acting in a quasi-judicial capacity as here. But we find no ground to differ from the judge’s conclusion in favour of the City Council.

### **Delay in bringing judicial review of Bradbury Place permit**

[40] On 13 January 2017 the judge refused leave to Oasis to bring an application for judicial review with regard to the Bradbury Place permit on the ground of delay. The application had been brought within three months but only two days before the three months provided by Order 53. The City Council and Mr McAteer’s client contended that there was delay on the part of Oasis; the application was not brought promptly and no explanation for this delay had been given. The judge addressed

this at paragraphs 58 and 71 to 75 and 99 to 101 of the judgment. He took the view that the judicial review applications before him in the context of compliance with Order 53 Rule 4 should be viewed as analogous to such applications in respect of the grant of planning permissions. He accepted the citation to him of *Musgrave Retail Partners (NI) Limited Application* [2012] NIQB 109 and *In Re Wilson's Application* [1918] NI 415. It was implicit in his findings that promptitude was of particular importance between commercial rivals and in a situation of this kind. "If disputes of the nature of the Bradbury case are to be litigated by judicial review the court expects full compliance with the need to act promptly".

[41] We have taken into account Mr McCollum's submissions with regard to this issue but we are not persuaded that there is any error in the conclusion reached by the judge. In any event the issue of delay is one decided by a judge in the exercise of his discretion where this court will be loath to interfere. We therefore reject the appeal against the judge's finding in favour of the Bradbury place permit, notwithstanding that the issue of cumulative impact was put before the Committee of the Council wrongly by those advising the Committee. The judge's decision was consistent with that of Gillen J in *Re McDonnell* [2007] NIQB 125 and my own decision *In Re SK (A Minor)* [2017] NIQB 9.

## **Remedy**

[42] Belfast City Council made a decision to grant an amusement permit to Hazeldene's application at Botanic Avenue on the basis set out in the report to the Council, that one of its five key criteria relating to cumulative impact was complied with because the application would lead to the only arcade on that particular shop frontage. It is now accepted that that is an erroneous interpretation of the Council's own policy.

[43] It bears, therefore, some close comparison with the facts of *In Re Barry Gilligan and Others* [2003] NICA 10. Carswell LCJ, delivering the judgment of this court, upheld the view of the judge that the interpretation of the policy by the decision-maker there was neither lawful nor reasonable. He concluded as follows:

"We accordingly hold, as did the judge, that the Department has misinterpreted and misapplied its policy in an important respect. It was clearly a material part of the Department's consideration in giving planning permission for the development, and it could not be regarded as having been so tangential or peripheral that it would have made no difference to the outcome if it had been correctly approached."

[44] Applying that decision to the situation before this court it cannot be disputed that the cumulative policy was of importance as it was one of the five key criteria



identified by the Council itself. Again it could not be regarded as so tangential or peripheral that it made no difference to the outcome if it had been correctly approached. The Committee divided in this decision. Some members may have reached a different conclusion if they had been properly advised of the meaning of the policy by officials.

[45] The recent decision in the Court of Appeal in the *Department of Education v Cunningham* [2016] NICA 12 is relevant:

“In the planning context, where very substantial sums of money may be at stake it is advisable to maintain a precautionary approach. The same might be said of public procurement. The price of probity is eternal vigilance. A test of ‘substantial doubt’, as formulated by Lord Brown on behalf of their Lordships is appropriate. No doubt that might also be appropriate in certain other situations. But this appeal is concerned principally with the allocation of resources: whether a very small school requiring enhanced subsidy be closed or could it be operated as an integrated school, where financial and economic considerations also play an important part.”

In my view a licensing matter of this sort with commercial objectors is the sort of ‘other situation’ contemplated by this court where a precautionary approach is appropriate. This is not to suggest that there was any impropriety disclosed here. In fact there is no criticism of the Council’s Committee here but only of the advice it received regarding a key policy.

[46] In all the circumstances we conclude that the proper course is to uphold the appeal of the appellant Oasis to the extent of quashing the decision of the City Council to grant a permit for the amusement facility at Botanic Avenue. In regard to the grant of permission for an amusement facility at Bradbury Place, as stated above, we uphold the decision of the judge.





Our ref ST/JM/ 429071

Being dealt with by: Conor Morgan

Your ref: LA04/2018/0098/F

Ext: 5275

Date: 13/02/18

Director of Planning & Place  
Belfast Planning Service  
Belfast City Council  
The Cecil Ward Building  
4-10 Linenhall Street  
Belfast  
BT2 8BP

Dear Sir / Madam,

**LOCATION: 73-75 NORTH STREET BELFAST BT1 1NL**  
**PROPOSAL: CHANGE OF USE FROM RETAIL TO AMUSEMENT ARCADE AND ALTERATIONS TO SHOP FRONT.**

The Environmental Health Service has examined the proposed plans and associated information submitted in support of the above development. This response considers the proposed development in terms of noise, air pollution, general amenity, ambient air quality and contaminated land and other considerations.

Should the Council deem to grant this application, this service would request that consideration be given to attaching the following informatives:

**CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT (NORTHERN IRELAND) 2011**

The applicant is advised to ensure that all plant and equipment used in connection with the development is so situated, operated and maintained as to prevent the transmission of noise to nearby retail accommodation.

Should any unforeseen ground contamination be encountered during the development, and in order to protect human health, all works on the site should immediately cease. Belfast City Council should be informed and a full written risk assessment in line with current government guidance (Model Procedures for the Management of Land Contamination-CLR11) that details the nature of the risks and any necessary mitigation measures and verification (if required) should be prepared and submitted for appraisal.

Continued....

**Siobhan Toland** M.Sc. , F.C.I.E.H  
Assistant Director

**Belfast City Council**, City and Neighbourhood Services Department  
The Cecil Ward Building, 4-10 Linenhall Street, Belfast BT2 8BP  
Tel: 028 9027 0428 Textphone: 028 9027 0405 Fax: 028 9027 0422  
Email: envhealth@belfastcity.gov.uk

2.

**AMUSEMENT PERMIT**

In accordance with the Betting, Gaming, Lotteries and Amusement (Northern Ireland) Order 1985, the applicant must apply to Belfast City Council, Building Control for an application form to apply for an amusement permit.

Yours sincerely,

Conor Morgan  
Environmental Health Officer  
Environmental Protection Unit

# BELFAST CITY COUNCIL

## PLANNING APPLICATION CONSULTATION CHECKLIST



**Belfast**  
City Council

Planning Application Ref No. LA04/2018/0098/F

Ref No 429071

Date Received: 19/1/18

Proposal: Change of use from retail to amusement arcade and alterations to shop front

	Y/N?	COMMENTS
<b><u>NOISE (includes vibration)</u></b>  Does the proposal have the potential to adversely impact on amenity due to noise?  Is the proposal likely to be adversely affected by noise?	  N  N	
<b><u>AIR POLLUTION</u></b>  Does the proposal have the potential to adversely impact on amenity due to air pollution (eg odour, dust)?  Is the proposal likely to be adversely affected by air pollution?	  N  N	
<b><u>GENERAL AMENITY</u></b>  Does the proposal have the potential to adversely impact on amenity due to vermin, insect or litter problems etc?  Is the proposal likely to be adversely affected by vermin, insects or litter etc?	  N  N	
<b><u>AMBIENT AIR QUALITY</u></b>  Does the proposal have the potential to have an adverse impact on ambient air quality?  Is the proposal likely to be adversely affected by ambient air quality?	  N  N	
<b><u>CONTAMINATED LAND</u></b> To the best of the officer's knowledge is the site potentially contaminated either as a result of: <ul style="list-style-type: none"> <li>• a previous use of the site</li> <li>• use, or a previous use, of adjacent land where there may be the possibility of migration of contaminants</li> <li>• naturally occurring levels of contamination, excluding Radon ?</li> </ul>	  N  N  N	

<b><u>OTHER CONSIDERATIONS</u></b>  Does the proposal have the potential to adversely impact on local amenity due to other Environmental Health considerations?	N	
---	---	--

Is application for proposal accompanied by an Environmental Statement (ES)?	N	
Has ES been considered?	N	
Has 3 <sup>rd</sup> party (eg objector/CNS) comment been received?	N	
Has 3 <sup>rd</sup> party (eg objector/CNS) comment been considered?	N	
Should other agencies be involved as additional consultees eg CNS, Land Resources Unit, IPRI, HSENI, etc.	N	

**CITY AND NEIGHBOURHOOD SERVICES DEPARTMENT - RECOMMENDATION ON APPLICATION**

	Tick	Comment
No objection		
Further information required from applicant		
No objection with informative	X	
No objection subject to conditions		
Objection on EH ground		

Name: Conor Morgan

Signature: \_\_\_\_\_

Date: 09 May 2022

**NOTE:** Any consultation response provided by the City and Neighbourhood Services Department is based on:

- information supplied by the applicant, and
- other information currently available.

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**APPROVAL OF PLANNING PERMISSION**

**Planning Act (Northern Ireland) 2011**

Application No: **LA04/2018/0098/F**

Date of Application: **14th December 2017**

Site of Proposed  
Development:

**73-75 North Street  
Belfast  
BT1 1NL**

Description of Proposal:

**Change of use from retail to amusement arcade and  
alterations to shop front**

Applicant: Oasis Retail Services Ltd  
Address: Oasis House  
Mallusk Drive  
Newtownabbey  
BT36 4GX

Agent: MBA Planning Ltd  
Address: 4 College House  
Citylink Business Park  
Belfast  
BT12 4HQ

Drawing Ref: 01, 02, 03, 04

The Council in pursuance of its powers under the above-mentioned Act, hereby

**GRANTS PLANNING PERMISSION**

for the above-mentioned development in accordance with your application subject to compliance with the following conditions which are imposed for the reasons stated:

1. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

Reason: As required by Section 61 of the Planning Act (Northern Ireland) 2011.

**Informatives**

1. **This approval should be read in conjunction with the Legal Agreement under Section 76 of the Planning Act (Northern Ireland) dated 13<sup>th</sup> April 2022.**



2. CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT (NORTHERN IRELAND)  
2011

The applicant is advised to ensure that all plant and equipment used in connection with the development is so situated, operated and maintained as to prevent the transmission of noise to nearby retail accommodation.

Should any unforeseen ground contamination be encountered during the development, and in order to protect human health, all works on the site should immediately cease. Belfast City Council should be informed and a full written risk assessment in line with current government guidance (Model Procedures for the Management of Land Contamination-CLR11) that details the nature of the risks and any necessary mitigation measures and verification (if required) should be prepared and submitted for appraisal.

3. AMUSEMENT PERMIT

In accordance with the Betting, Gaming, Lotteries and Amusement (Northern Ireland) Order 1985, the applicant must apply to Belfast City Council, Building Control for an application form to apply for an amusement permit.

4. The drawing refs referred to above correspond with those drawings submitted to the Authority in respect of this application and published to the Planning Portal NI on: 18/01/2018, Drawing Nos 01, 02, 03 and 04.

**Authorised Officer**

**Dated: 21<sup>st</sup> April 2022**



Building Control Service  
Ground Floor  
Cecil Ward Building  
4-10 Linenhall Street  
Belfast  
BT2 8BP

22<sup>nd</sup> June 2022

Dear Mary

[REDACTED]  
[REDACTED]  
[REDACTED]  
Oasis Gaming, 73-75 North Street, Belfast, BT1 1NL.  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Please note that at this time that are no current police objections to the above applications being further considered by Belfast City council, residents, other local business and NIFRS.

If the Licences are granted in due course please forward police a copy with any special conditions or restrictions with confirmation that all Belfast City Council requirements and conditions including all Building Regulations approvals have been adhered to and that any current, relevant COVID – 19 guidance will be considered by the licence holder.

Kind Regards

[REDACTED]

[REDACTED]

Licensing Officer, Musgrave Station, Belfast

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# Amusement Permit Policy





## Introduction

To operate an amusement arcade a person must apply to Belfast City Council ('the Council') for an amusement permit. The Council is directly empowered to grant or refuse amusement permits in Belfast under the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 as amended, ('the 1985 Order').

This means that the Council issue amusement permits to premises, typically described as amusement arcades, which have 'amusement with prizes machines'. These types of machines are normally known as gaming machines. Except in the case of renewing amusement permits, applicants are normally required to first obtain planning permission for an amusement arcade before applying for an amusement permit.

## What are gaming machines and amusement arcades?

A gaming machine (or amusement with prizes machine) means any machine which is used for playing a game of chance, by the insertion of money into it, with the aim of winning money. There are lower prize gaming machines and higher prize gaming machines. Use of the higher prize gaming machines is restricted to adults only (i.e. persons aged 18 or over). In Belfast, admittance to amusement arcades is usually restricted to adults because many premises only operate higher prize machines.

An amusement arcade is defined as premises which are being used wholly or mainly for amusement by gaming machines. The Council will normally deem this to be the case when there is at least one more gaming machine than the total number of all other types of machines or otherwise when it can be reasonably viewed that a substantial proportion of the business relates to the provision of gaming machines (more than de minimus)

Registered Clubs, bookmaking offices, commercial bingo clubs, public houses and licensed hotels are not required to have an amusement permit in order to have gaming machines, though other aspects of gambling legislation in Northern Ireland may apply to gaming machines in these establishments.

## Aim and scope of policy –why does the Council need an amusement permit policy?

The overall aim of the amusement permit policy is to serve as a guide for Elected Members, Council officers, applicants and the wider public on applications for amusement permits in the Belfast City Council area. By outlining those matters which may be taken into account in determining an application for an amusement permit this policy has been developed to introduce greater clarity, transparency and consistency to the decision-making process.

The need for this policy was highlighted by previous Court decisions on amusement permit applications. These demonstrated the need for the Council to make its position clear on the issues to be considered when deciding to grant or refuse an amusement permit application under the 1985 Order. Some of these issues, such as location, structure, character and impact on neighbours and the surrounding area overlap with planning considerations. While the Council should be slow to differ from the views of the planning



authority, it is entitled to do so. In coming to its own decision, the Council is not bound to accept in its entirety the decision of the planning authority.

This policy is framed to be broadly consistent with regional planning guidance on amusement arcades and, at the same time, it is tailored to take into account local considerations particular to Belfast, including the location of existing amusement arcades in the City.

Whilst this policy strives to introduce greater certainty into decision-making on amusement permit applications, its contents do not prejudice the statutory power of the Council, under Article 111 of the 1985 Order, to consider any ground it deems reasonable to refuse to grant an amusement permit. The Council will therefore take into account a change in circumstances that may influence the Amusement Permit Policy and any criteria set out within it.

Although the policy is primarily intended to serve as a guide for assessing applications for amusement permits by the Council's Licensing Committee, given its interrelationship with planning considerations the policy will also be a material consideration to related applications for planning permission by the Council's Town Planning Committee. This is because applicants are usually required (except in the case of renewing amusement permits) to first obtain planning permission for the proposed amusement arcade before applying for an amusement permit.

At present, the Council is consulted on planning applications and DOE (NI) Planning makes the final decision on all planning applications, including those for amusement arcades. However, this arrangement is set to change and the Council will become the statutory planning authority for planning applications of this type in 2015. Until this transfer of power takes place, this amusement permit policy will be a material consideration for DOE (NI) Planning in determining planning applications for amusement arcades in Belfast.

This policy outlines five criteria that the Council will typically consider when assessing the suitability of a location for a proposed amusement arcade. As these criteria largely overlap with planning considerations, reference to them by DOE (NI) Planning is intended to reduce the likelihood of conflicts arising on issues that are common to both planning applications and respective permit applications.

Notwithstanding those considerations or criteria expressly outlined in this policy, the Council will take into account any matter which it deems relevant. The Council may also depart from the policy where it appears appropriate or necessary, although it is envisaged that this will only happen in exceptional circumstances.

In exercising its duties and responsibilities under this policy, the Council has been, and will continue to be, mindful of its obligations under the Human Rights Act 1998. The Council will endeavour to ensure that all action taken on foot of this policy is lawful, reasonable and proportionate.

It is anticipated that the policy will be reviewed every three years so that it can remain abreast of the dynamics of the gambling industry and any changes in legislation.



## Objectives of the Policy

The key objectives of this policy can be largely linked to the Council's overarching strategic goal of improving the quality of life for present and future generations in Belfast by making it a better place in which to live, work, visit and invest. Against this background and in light of the research carried out, the interrelated key policy objectives are to:

1. promote the retail vibrancy and regeneration of Belfast;
2. enhance the tourism and cultural appeal of Belfast by protecting its image and built heritage;
3. support and safeguard residential communities in Belfast;
4. protect children and vulnerable persons from being harmed or exploited by gambling;
5. respect the need to prevent gambling from being a source of crime and disorder.

The first two policy objectives are in line with our key strategic objectives to support the local economy, including through the development and promotion of tourism. The third objective ties in with the 'support people, communities and neighbourhoods' aspect of our Investment Programme. The final two objectives are consistent with the core objectives of the Gambling Act 2005, which at present only applies to Great Britain but is currently being considered by the Department of Social Development (NI) in the context of the review of gambling legislation in Northern Ireland. .

## Assessing amusement permit applications

To meet these policy objectives when determining amusement permit applications the Council will **assess each application on its own merits** and will:

1. have regard to the requirements set out in the 1985 Order; and will
2. assess the suitability of the location for a proposed amusement arcade, which will typically be based on a number of assessment criteria set out in this policy. These reflect, inter alia, the key objectives of the policy and in light of all research findings, together with a comparative analysis with Great Britain (GB) and the Republic of Ireland (ROI).

The Council will consider both these components of policy when deciding on **new** amusement permit applications. When determining an application for **renewal** of an amusement permit, the primary focus will be on the requirements set out in the 1985 Order, and this policy will only be applied in very exceptional circumstances.

Also, prior to granting or renewing any amusement permit the Council will have regard to comments received from any relevant statutory agency in relation to fire or other safety matters.





## **Legal requirements under the 1985 Order**

In accordance with the 1985 Order, the Council will have regard to the following statutory requirements:

- 1. The character, reputation and financial standing of the applicant;**
- 2. The nature of the premises and activity proposed;**
- 3. Opinion of the Police; and**
- 4. Submissions from the general public.**

Each of these requirements is outlined below.

### **1. The character, reputation and financial standing of the applicant**

*In considering the fitness of an applicant to hold an amusement permit, the Council will take into account:*

- *the character and reputation of the applicant, as corroborated by references from impartial and reliable sources, including the Police; and*
- *the financial standing of the applicant, as verified by independent credit check organisations and financial references.*

#### **Justification and clarification**

Taking on board the prevailing statutory desire by government to make gambling fair and crime-free, this policy aims to ensure that players are protected from illegal or unscrupulous operators.

Under the 1985 Order, the Council is obliged to consider the fitness of a person who is, or proposes to be, the occupier of the premises. Accordingly, the Council will consider the character, reputation and financial standing of the applicant and any person appointed to manage the business. The applicant can be an individual, a company or a partnership. In the case of the latter two, the fitness of the corporate organisation is relevant, together with the character of the directors and people with executive control.

As well as taking into account the considered views of the Police (see No.3 below), the Council will require the reputation of the applicant to be endorsed by references from sources such as bank managers, accountants and elected representatives. In order to testify to their financial standing, applicants will be asked to provide a credit report from an independent credit rating agency, together with financial references.

### **2. The nature of the premises proposed**

*The Council will aim to ensure that the nature of the premises proposed is appropriate for the location in question. This will involve careful consideration of the following matters: how premises are illuminated; the form of advertising and window display; and how notices are displayed on the premises.*

*Guidance in respect of the above 3 considerations can be found in Appendix A to this policy.*

#### **Justification and clarification**

As far as amusement arcades and gaming machines are concerned, legislation exists to regulate rather than promote this form of gambling. Accordingly, the Council are keen to ensure that the premises do not openly encourage gambling.



### 3. Opinion of the Police

*The Council will attach significant weight to the opinion of the Police when assessing an application, in relation to their views on the character and reputation of the applicant, as well as the location of the premises.*

#### Justification and clarification

Under the 1985 Order, the Council must consult with the Police on amusement permit applications. It is important to ascertain the views of the Police, not only in respect of the character of the applicant but also the suitability of the area for an amusement arcade. For example, it may be relevant to the assessment of the application if the Police indicate that the vicinity of the proposed amusement centre is associated with abnormal levels of antisocial behaviour, or has been the subject of police intervention in the past. To this end, the Council will request that the Police complete a short questionnaire on the applicant and premises, a sample copy of which is contained in Appendix B.

### 4. Submissions from the general public

*The Council will take into account the number and nature of submissions received from the general public when determining an amusement permit application, particularly those from persons or representatives of persons in neighbouring properties.*

#### Justification and clarification

Within seven days of making an amusement permit application the applicant must place amusement permit advertisements in three out of four newspapers named by the Council. This public advertisement allows objections and submissions to be made by any person. All applications for amusement permits are referred to the Council's Licensing Committee who will take into account all submissions, whether they are made in opposition to an amusement permit, in support of a permit, or submitted as observations only.

Bearing in mind the key objectives of this policy, particularly those relating to support for retailing and residential communities, the Council will carefully consider submissions received from neighbouring properties and will consider them whether they are made by residents, businesses or any other interested party.

### Belfast City Council's criteria for assessing the suitability of a location

The Council will objectively assess each application on its own merits.

Five criteria will typically be used when assessing the suitability of a location for a proposed amusement arcade:

- 1. Impact on the retail vitality and viability of Belfast City;**
- 2. Cumulative build-up of amusement arcades in a particular location;**
- 3. Impact on the image and profile of Belfast;**
- 4. Proximity to residential use; and**
- 5. Proximity to schools, youth centres and residential institutions for vulnerable people.**

#### Clarifications:

Before we look at these in detail, we must first make a number of clarifications on the use of these assessment criteria:



- While it is acknowledged that the existing use of the proposed premises will be a material consideration in the assessment of an amusement permit application, we may not accord substantial weight to the fact that the property (unless it was previously an amusement arcade) is vacant or used for non-shopping purposes, for example, a fast-food outlet or other licensed business. In other words, while every application will be carefully considered the Council will not allow the non-shopping use of a property or the fact that it is vacant to overshadow all other considerations to the detriment of reaching a balanced decision.
- An amusement arcade accommodates a particular type of gambling activity and should not be generalised as another form of non-shopping use or licensed activity. It is a sui generis development (of its own kind) that has its own matters to address under the 1985 Order.

Each of the 5 criteria is now explained.

### **1. Impact on the retail vitality and viability of Belfast City**

*While an application for an amusement permit in Belfast City Centre will be assessed on its merits, it will only be granted in the retail core of Belfast City Centre if it is:*

- *A renewal of an existing amusement permit; or*
- *Part of a major, retail-led mixed use development; or*
- *An upper storey development.*

*In addition, the Council will not grant an amusement permit in any part of the Belfast City Council area where an amusement arcade would break up an otherwise continuous shopping frontage.*

#### **Justification and clarification**

In line with the objective to promote the retail vibrancy and regeneration of Belfast, the Council is keen to promote pedestrian flows in Belfast's busiest shopping streets by supporting retailers and retail development.

In stark contrast to shop units, amusement arcades are commercial leisure venues which do not have a general appeal for visitors and only have a small customer base. Only 6 per cent of people surveyed in NI in 2010 stated that they used fruit or slot machines. Viewed in this context, the opening of amusement arcades in the retail core of Belfast can be considered incompatible with the Council's aim to promote shopping in the main shopping streets of Belfast City Centre. The extent of the retail core within Belfast City Centre is shown in Appendix C.

Encouraging retailing in the retail core is in accordance with retail planning policy outlined in the DOE's Planning Policy Statement 5 on Retailing and Town Centres (PPS 5, paragraphs 11, 23 and 25).

The Council's aim of maintaining a continuous shopping frontage in all parts of Belfast is in keeping with DOE (NI) Planning's 'Development Control Advice Note 1' (DCAN 1). An application for an amusement arcade is deemed to break up a continuous shopping frontage where it proposes to replace a shop unit that is bordered by an adjacent shop unit either side of it. This may also apply to situations when one or more of the shops are vacant at the time. For the purposes of this policy a shop unit can be defined as one belonging to Class A1 of the Planning (Use Classes) Order (Northern Ireland) 2004. A copy of this use class is contained in Appendix D.

### **2. Cumulative build-up of amusement arcades in a particular location**

*The Council will limit the number of amusement permits it grants to one per shopping or commercial frontage and one per shopping centre. Where this number of permits has already been granted, or exceeded, no more amusement permits will be considered.*



*Under this criterion, 2 or more amusement arcades in adjacent ground-floor units will not be allowed (except for those already existing), including the ground-floor extension or merger of an existing establishment into an adjoining unit.*

#### **Justification and clarification**

As the Council want to promote retailing, it is anxious to avoid a cumulative build-up or clustering of amusement arcades in a particular location. This approach is also supported by the research finding that there are twice as many machines per person in Belfast than in GB as a whole.

Unlike betting offices and bingo clubs, where licensing is a matter for the courts in Northern Ireland, there is no legal requirement by the applicant to demonstrate that a demand exists for an amusement arcade in a particular area. However, DOE (NI) Planning does consider the cumulative impact of these forms of developments. (DCAN 1) refers to the need to '*take into account the effect of larger numbers on the character of a neighbourhood*'. Likewise, Planning Policy Statement 5 on Retailing and Town Centres (PPS 5) highlights the requirement to avoid a '*clustering*' of non-retail uses, a term which is inclusive of amusement arcades, in Retail Cores and District Centres.

For the purposes of this amusement permit policy, a shopping or commercial frontage can be defined as a group of mainly ground-floor businesses that shares a continuous frontage and which is usually separated from other frontages by a different road or street name. A shopping centre refers to a group of retail and non-retail uses that is usually anchored by a large store. Beyond Belfast City Centre, shopping centres are referred to as District Centres and are located off Arterial Routes, which are the major transport thoroughfares into the City Centre.

### **3. Impact on the image and profile of Belfast**

*Amusement permits will not be granted at locations that are regarded as tourism assets, and at Gateway locations in Belfast City Centre.*

#### **Justification and clarification**

In keeping with one of the key objectives of this policy, namely to enhance the tourism and cultural appeal of Belfast by protecting its image and built heritage, the Council will not grant amusement permits at locations regarded as tourism assets and at key entrance junctions (Gateways) into Belfast City Centre.

The Council will protect those areas, buildings and their settings (if appropriate) that are inherently linked to the image and tourist profile of the City. As far as this policy is concerned, the setting of a tourist asset relates to the neighbouring property either side of its main entrance, whether or not this neighbouring property is adjacent to it, or separated from it by a road or street.

A tourism asset is any feature associated with the built or natural environment that is of intrinsic interest to tourists. Most of the tourism assets in Belfast are listed buildings. These often feature in the historical database of the Northern Ireland Environment Agency and as tourist attractions in Visitor Guides for Belfast. If you need clarification on what is considered a tourist asset you can contact us.

Under this criterion, the Council will also protect the Gateway locations at the edge of Belfast City Centre which are considered suitable for landmark development capable of raising the profile of Belfast. These Gateway locations are key entrance points into the City Centre, where visitors form their first overall impression of the city centre. Viewed in this context, it is considered that granting amusement permits for new premises at ground-floor level is inappropriate for these locations. If you need clarification on what is considered a Gateway location you can contact us.



#### 4. Proximity to residential use

*Amusement permits will not be granted in areas that are predominantly residential in character, including local centres located within these areas. They will also not be granted in non-residential property that is immediately adjacent to residential property.*

##### Justification and clarification

Bearing in mind that one of the Council's corporate objectives is to 'support people, communities and neighbourhoods' and that this is also a key objective of this policy, the Council will seek to prevent amusement arcades opening in predominantly residential areas.

Residential areas commonly have a local centre. PPS 5 describes a local centre as:

*'Small groupings of shops, typically comprising a general grocery store, a sub-post office, occasionally a pharmacy and other small shops of a local nature.'*

Clearly, a local centre in a predominantly residential area should provide local shops and services that cater for the daily needs of the wider community, as opposed to accommodating an amusement arcade which provides a non-essential, gambling-based leisure activity for a small number of people.

This criterion is also consistent with DOE (NI) planning policy guidance. DCAN 1, states that amusement arcades *'are not normally acceptable near residential property'*.

Areas that are predominantly residential in character obviously exclude extensive industrial or business areas which are clearly distinct from housing. Predominantly residential areas also exclude shopping and commercial areas located along Belfast's Arterial Routes.

Arterial routes are the major access roads and public transport corridors into the City Centre. They typically accommodate the greatest mix of uses outside of the City Centre, including shopping, commercial, social, leisure, community and other uses. There are 18 of these arterial routes in Belfast.

#### 5. Proximity to schools, youth centres and residential institutions for vulnerable people

*The Council will not grant amusement permits in locations near schools, youth centres and residential institutions for vulnerable people, including children's care homes and hostels for the homeless.*

##### Justification and clarification

The protection of children and vulnerable people from gambling is a key objective of this policy. Vulnerable people are those persons who gamble more than they want to, persons who gamble beyond their means and persons who may not be able to make informed or balanced decisions about gambling perhaps due to a mental impairment, alcohol or drugs.

This component of the policy is in keeping with the prevailing gambling legislation in Great Britain, where Councils have embodied it as a core objective of their licensing policies, and is in line with similar legislative proposals being considered by the Department for Social Development (Northern Ireland) and the Department of Justice & Law Reform in the Republic of Ireland.

While the Council acknowledges that amusement arcades restrict admittance to underage persons and that the 1985 Order does not specifically refer to the need to consider the effects on persons attending schools or youth clubs, the Council believes that a precautionary approach is required for applications made near locations where children, young persons and vulnerable



people congregate. Accordingly, the Council will not permit amusement arcades within 200metres of a school, youth centre or a residential institution. This distance has regard to regional planning policy guidance, which recognises it as '*a location within easy walking distance*'.

## Conclusion

Overall, this policy is intended to strike a balance between safeguarding the concerns of the wider public on the one hand and respecting an applicant's desire to obtain an amusement permit on the other. From an operational perspective, it is hoped that the policy will help to clarify the Council's position on amusement permit applications and allow for greater coherence and consistency in decision-making.

The Council has broad discretion in the range of matters it may consider in the determination of applications. This policy establishes, for all interested parties, the matters which are likely to be taken into consideration. This does not prevent the Council from departing from this policy where it is appropriate to do so.



## Appendix A

### Guidance for premises (as per 1985 Order & amendments thereof)

In terms of the actual premises used wholly or mainly for the provision of amusements by gaming machines, Belfast City Council has powers, under Article 111, paragraph 6b of the 1985 Order, to specify:

- how premises are illuminated;
- the form of advertising and window display; and
- how notices are displayed on the premises.

Addressing each of the above matters in turn, the following points should be noted by applicants:

- **Illumination** – as a general rule illumination should be kept to a minimum and no floodlighting of premises will be permitted, save for trough/spot lighting over the fascia.
- **Form of advertising and window displays** – the name of the business should be clearly advertised in the window. Legislation in Northern Ireland restricts access to higher prize machines by people under eighteen. Notification of this restriction should be clearly displayed on the exterior of the premises and ideally a proof-of-age scheme should be implemented by the operator. The windows should be designed so as to shield the interior (and machines) from public view. This could involve the use of fixed screening inside the windows, opaque fenestration or a combination of both. Projecting signs that advertise the presence of the establishment are not considered suitable for amusement arcades.
- **Notices on premises** - advertising in amusement arcades should be legal, socially responsible and not construed to exploit or specifically target the young and other vulnerable persons through style, presentation or content. Interior notices indicating that access is prohibited to persons aged under eighteen should be prominently

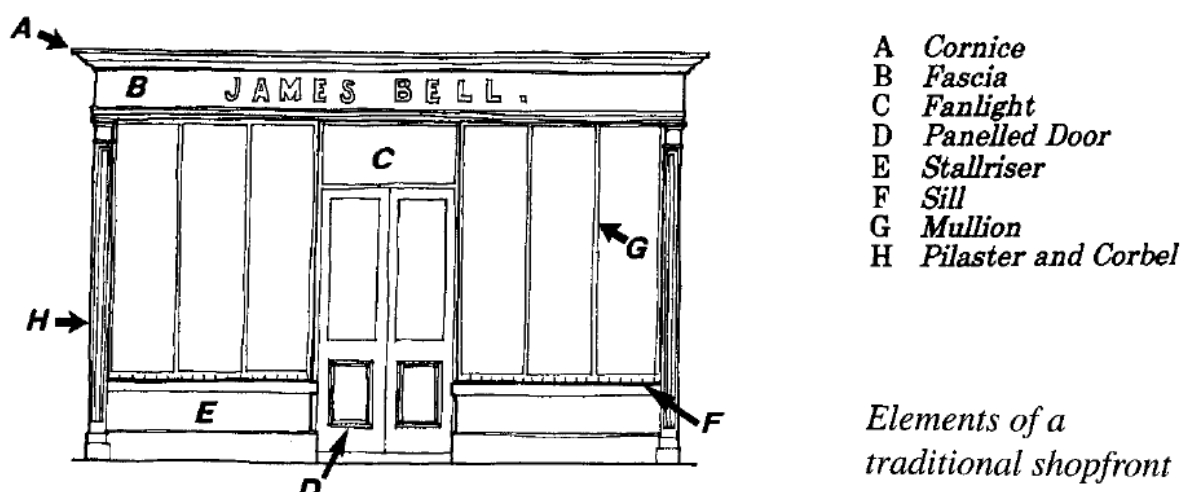




displayed. Notices containing helpline numbers for organisations such as GamCare, Gamblers Anonymous, Gambleaware, etc. should also be displayed within the premises. Applicants may also wish to consider providing information leaflets with helpline numbers near gaming machines.

Guidance on the content of Notices is available in the rule book known as the Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the Code). The Committee of Advertising Practice (CAP) is the self-regulatory body that creates and enforces this Code. The latest version of the CAP CODE is available online at <http://www. www.cap.org.uk/Advertising-Codes/Non-broadcast-HTML.aspx>

The requirement to regulate illumination, advertising and window displays on an amusement arcade has to be balanced against a wider planning desire to avoid the creation of an unsightly facade that could undermine the visual amenity of the streetscape. Therefore, in order to promote their integration, some policies in Britain cite the need for amusement arcades to respect elements of the traditional shop-front design (see illustration below).



Reference to the traditional shop-front design is intended to alert applicants to the key features of a retail façade. It is submitted as information only and is not intended to be read as a rigid template for the frontage design of premises.





## Appendix B Police Questionnaire

### The Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (as amended)

In accordance with the above legislation, relating to Amusement Permits, the Police Service of Northern Ireland (PSNI) is duly requested to give its considered opinion in respect of the fitness of the applicant to hold an amusement permit and the location of the application premises.

#### Applicant details:

#### Premises' details:

Application for Amusement Permit (including renewal of Permits)				
Question	Y	N	Don't Know	If 'Y' please provide details including dates
Has the applicant ever been convicted of a criminal offence?				
Has the Police ever received complaints about the applicant or premises?				
Has the Police ever been called to intervene in disturbances in the vicinity of the premises?				
Has the Police ever objected to an amusement permit application for these premises in the past, or to an application made by the same applicant elsewhere?				
Overall, does the Police have any objections to this applicant being granted an amusement permit?				
Overall, in the opinion of the Police, is the location of the premises considered suitable for an amusement arcade? For example its suitability in terms of its proximity to residential institutions that are used for bail or probation purposes.				If 'N' please give reasons



## Appendix C: Belfast City Centre Retail Core





**Appendix D: Definition of a shop**  
**- extract from The Planning (Use Classes) Order (Northern Ireland) 2004**

SCHEDULE

PART A

SHOPPING AND FINANCIAL & PROFESSIONAL SERVICES

*Class A1: Shops*

Use for all or any of the following purposes –

- (a) for the retail sale of goods other than hot food;
- (b) as a post office;
- (c) for the sale of tickets or as a travel agency;
- (d) for hairdressing;
- (e) for the display of goods for retail sale;
- (f) for the hiring out of domestic or personal goods or articles; or
- (g) for the reception of goods including clothes or fabrics to be washed, cleaned or repaired either on or off the premises

where the sale, display or service is to visiting members of the public.

## Amusement Permit Policy

The policy was ratified by Belfast City Council on 1 May 2013.

**Building Control Service**  
Health & Environmental Services Department  
Belfast City Council  
5<sup>th</sup> Floor  
9 Lanyon Place  
Belfast  
BT1 3LP

Tel: (028) 9027 0650  
[buildingcontrol@belfastcity.gov.uk](mailto:buildingcontrol@belfastcity.gov.uk)

Additional copies available on request or from our webpage.

Copies are also available in alternative formats on request from our Building Control Service.



<b>Subject:</b>	<b>Houses in Multiple Occupation (HMO) Licences Issued Under Delegated Authority</b>
<b>Date:</b>	17 August 2022
<b>Reporting Officer:</b>	Kevin Bloomfield, NIHMO Manager
<b>Contact Officer:</b>	Vivienne Donnelly, City Protection Manager Kevin Bloomfield, NIHMO Manager

<b>Restricted Reports</b>	
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"/>

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

<b>1.0</b>	<b>Purpose of Report or Summary of main Issues</b>
<b>1.1</b>	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.
<b>2.0</b>	<b>Recommendations</b>
<b>2.1</b>	The Committee is requested to note the applications that have been issued under the Scheme of Delegation during June and July 2022.

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 June and July 2022.

Premise Name	Licensee	Ward	HMO Policy Area or Development Node
Apartment 3, 3 Ulsterville Avenue	Mr John McKnight	WINDSOR	ULSTERVILLE HMO 2/21
Apartment 2, 3 Ulsterville Avenue	Mr John McKnight	WINDSOR	ULSTERVILLE HMO 2/21
Apartment 1, 3 Ulsterville Avenue	Mr John McKnight	WINDSOR	ULSTERVILLE HMO 2/21
63 Wellesley Avenue	Dr John Robert Young	WINDSOR	EGLANTINE HMO 2/09
6 Jerusalem Street	Mr Gabriel McCaffrey	CENTRAL	HOLYLAND HMO 2/22
53 Palestine Street	Mr Harry McGrath	CENTRAL	HOLYLAND HMO 2/22
25 Meadowbank Street	Mr David Buckingham	WINDSOR	MEADOWBANK HMO 2/15
Flat 3, 30 Wellesley Avenue	Mr Martin King	WINDSOR	EGLANTINE HMO 2/09
Flat 2, 30 Wellesley Avenue	Mr Martin King	WINDSOR	EGLANTINE HMO 2/09
Flat 1, 30 Wellesley Avenue	Mr Martin King	WINDSOR	EGLANTINE HMO 2/09
Flat 2, 37 Dunluce Avenue	Mr Peter O'Hare	WINDSOR	ULSTERVILLE HMO 2/21
17 Hatfield Street	Mr Marc Kingsbury	CENTRAL	LOWER ORMEAU HMO 2/13
127 Fitzroy Avenue	Mr Gerard McLaughlin	CENTRAL	HOLYLAND HMO 2/22
96 University Avenue	K&M Properties Ltd	CENTRAL	HOLYLAND HMO 2/22
45 Donnybrook Street	Mr Mark Rourke	WINDSOR	EDINBURGH ST HMO 2/08
27 Tates Avenue	Mr Bruce Peter Hicks	WINDSOR	EDINBURGH ST HMO 2/08
Flat 12, 99-101 Eglantine Avenue	Mr James Greer	WINDSOR	EGLANTINE HMO 2/09
27 Damascus Street	Mr Brian Falls	CENTRAL	HOLYLAND HMO 2/22
Flat 3, 124 Eglantine Avenue	Mr Desmond Duffy	WINDSOR	EGLANTINE HMO 2/09
Flat 2, 124 Eglantine Avenue	Mr Desmond Duffy	WINDSOR	EGLANTINE HMO 2/09
75 Agincourt Avenue	Mr Gerry Donnelly	CENTRAL	HOLYLAND HMO 2/22
24 Deramore Avenue	Mr Mark Rowe	ORMEAU	BALLYNAFEIGH HMO 2/03
77 Tates Avenue	Mr Alex Hall	WINDSOR	EDINBURGH ST HMO 2/08
90 Agincourt Avenue	Mr Brendan Guinness	CENTRAL	HOLYLAND HMO 2/22
33 Claremont Street	MacAuley Heaney Properties Ltd	WINDSOR	FITZWILLIAM HMO 2/10
Flat 3, 73 Fitzroy Avenue	Mr Paul McKeown	CENTRAL	HOLYLAND HMO 2/22

Flat 2, 73 Fitzroy Avenue Belfast Antrim BT7 1HT	Mr Paul McKeown	CENTRAL	HOLYLAND HMO 2/22
Flat 1, 73 Fitzroy Avenue Belfast Antrim BT7 1HT	Mr Paul McKeown	CENTRAL	HOLYLAND HMO 2/22
21 Sandymount Street	Mrs Catherine Donnelly	STRANMILLIS	SANDYMOUNT HMO 2/17
69 Palestine Street	Mr Sean Smyth	CENTRAL	HOLYLAND HMO 2/22
26 Surrey Street	Mr Richard Smyth	WINDSOR	MEADOWBANK HMO 2/15
137 Broadway	Mrs Deirdre Gillen	BLACKSTAFF	NONE
16 St Albans Gardens	Mr Jonathan Forbes	STRANMILLIS	SANDYMOUNT HMO 2/17
Flat 2, 35 Wellesley Avenue	Mr Bradley Hanna	WINDSOR	EGLANTINE HMO 2/09
Flat 2 36 University Avenue	Mrs Josephine Morris	CENTRAL	HOLYLAND HMO 2/22
Flat 1 36 University Avenue	Mrs Josephine Morris	CENTRAL	HOLYLAND HMO 2/22
26 Thorndyke Street Belfast	Mrs Temitope Iregbu	BEERSBRIDGE	NONE
Flat 2, 117 Wellesley Avenue	Mr Brian Fegan	WINDSOR	EGLANTINE HMO 2/09
Flat 1, 117 Wellesley Avenue	Mr Brian Fegan	WINDSOR	EGLANTINE HMO 2/09
34 Palestine Street	Mrs Dolores Conway	CENTRAL	HOLYLAND HMO 2/22
42 Palestine Street	Mrs Catherine Maguire	CENTRAL	HOLYLAND HMO 2/22
45 Carmel Street	Mr Timothy Doyle	CENTRAL	HOLYLAND HMO 2/22
28 Cairo Street	Cosby Limited	CENTRAL	HOLYLAND HMO 2/22
52 Agincourt Avenue	Mr Patrick Loughran	CENTRAL	HOLYLAND HMO 2/22
2 Landseer Street	Dr John Robert Young	CENTRAL	STRANMILLIS HMO 2/19
53 Rugby Avenue	Mr Gerry Donnelly	CENTRAL	HOLYLAND HMO 2/22
52 Wellesley Avenue	Mrs Esther Henning	WINDSOR	EGLANTINE HMO 2/09
Apartment 102, 235 Newtownards Road	Skainos Limited	BALLYMACARRE TT	NONE
75 Haypark Avenue	Mr Malachy Mooney	ORMEAU	BALLYNAFEIGH HMO 2/03
18 St Albans Gardens	Mr Colin Bell	STRANMILLIS	SANDYMOUNT HMO 2/17
4 Southview Street	McGivern Properties Ltd	CENTRAL	HOLYLAND HMO 2/22
49 Pretoria Street	Ms Gemma McOscar	CENTRAL	STRANMILLIS HMO 2/19
22 Rathgar Street	Vale Developments Limited	WINDSOR	ADELAIDE HMO 2/01
68 Agincourt Avenue	Mrs Maria Finnegan	CENTRAL	HOLYLAND HMO 2/22
62 Carmel Street	Mr Paul McKeown	CENTRAL	HOLYLAND HMO 2/22
54 Palestine Street	Mr Bernard Henry	CENTRAL	HOLYLAND HMO 2/22
34 Melrose Street	Miss Alison Denvir	WINDSOR	EDINBURGH ST HMO 2/08

	40 Agincourt Avenue	Mr John Convery	CENTRAL	HOLYLAND HMO 2/22
	39 Stranmillis Park	Mrs Carmel Garvey	CENTRAL	STRANMILLIS HMO 2/19
	12 Sandymount Street	TJHFT Limited	STRANMILLIS	SANDYMOUNT HMO 2/17
	96 Carmel Street	CLONLARA INVESTMENTS LTD	CENTRAL	HOLYLAND HMO 2/22
	190 Ormeau Road	Mr Patrick Cavanagh	CENTRAL	LOWER ORMEAU HMO 2/13
	3 Donnybrook Court	The Mary McClory PI Settlement	WINDSOR	EDINBURGH ST HMO 2/08
	7 Harrow Street	Mr Brian Murphy	CENTRAL	HOLYLAND HMO 2/22
	43 Carmel Street	Mr Ciaran Kelly	CENTRAL	HOLYLAND HMO 2/22
	11 Rugby Parade	Mr Mark Fegan	CENTRAL	HOLYLAND HMO 2/22
	13 Palestine Street	Ms Mary Mildred Burke	CENTRAL	HOLYLAND HMO 2/22
	48 Carmel Street	Ms June McCall	CENTRAL	HOLYLAND HMO 2/22
	16 Pretoria Street	Mrs Deborah Buckley	CENTRAL	STRANMILLIS HMO 2/19
	46 Lisburn Avenue	Mrs Colette Rainey	WINDSOR	ADELAIDE HMO 2/01
	19 Cairo Street	Mrs Genevieve Brogan	CENTRAL	HOLYLAND HMO 2/22
	41 Ridgeway Street	Miss Christine Murray	STRANMILLIS	STRANMILLIS HMO 2/19
	34a Delhi Street	Ms Karen Kelly	ORMEAU	BALLYNAFEIGH HMO 2/03
	8 Carmel Street	Mr Barry Vincent Moran	CENTRAL	HOLYLAND HMO 2/22
	Flat 2, 13 Meadowbank Street	Mr Henry McIlveen	WINDSOR	MEADOWBANK HMO 2/15
	Flat 2, 3 Eglantine Avenue	Victor Capital Holdings Limited	WINDSOR	EGLANTINE HMO 2/09
	3 Balfour Avenue	Mr Theodore McLaughlin	CENTRAL	LOWER ORMEAU HMO 2/13
3.2	<b><u>Financial &amp; Resource Implications</u></b>			
	None			
3.3	<b><u>Equality or Good Relations Implications/Rural Needs Assessment</u></b>			
	There are no issues associated with this report.			





<b>Subject:</b>	<b>Application for a New Licence to operate a House of Multiple Occupation for 34 Sandhurst Gardens, Belfast, BT9 5AW</b>
<b>Date:</b>	17 August 2022
<b>Reporting Officer:</b>	Kevin Bloomfield, HMO Unit Manager, Ext. 5910
<b>Contact Officer:</b>	Kevin Bloomfield, HMO Unit Manager, Ext. 5910 Nora Largey, City 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 an application for a Licence permitting the use of premises as a House in Multiple Occupation (HMO).			
	Premises	Application No.	Applicant(s)	Managing Agents
	34 Sandhurst Gardens, Belfast, BT9 5AW	9262	Mr Daniel Brennan and Mr Patrick Quinn	Giant Property Limited
1.2	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.			
2.0	Recommendation			
2.1	Taking into account the information presented Committee is asked to hear from the Applicants and make a decision to either:  (i)     Grant the application, with or without any special conditions; or (ii)    Refuse the application.			
	<b><u>Notice of proposed decision</u></b>			
2.2	On the 15 June 2022, pursuant to Paragraph 9 of Schedule 2 of the Houses in Multiple Occupation Act (Northern Ireland) 2016 (“the 2016 Act”), Officers issued a Notice of Proposed Decision. <b>Appendix 2</b>			

2.3	The Notice of Proposed Decision stated that the council proposed to <b>refuse</b> the licence on the grounds of <b>overprovision</b> . A statement of reasons for the proposal was included in the Notice of Proposed Decision.
2.4	If the application is refused, the Applicants have a right of appeal to the County Court. An appeal must be lodged within 28 days of formal notification of the Council's decision.
<b>3.0</b>	<b>Main report</b>
	<p><b><u>Background</u></b></p> <p>3.1 The property had the benefit of a deemed HMO licence in the name of the existing owner which <b>expired on the 09 February 2022</b>. A deemed licence occurs if the Council does not determine an application within 3 months of a valid application being received and the applicant is to be treated as having been granted a licence which is valid for one year in the terms applied for. In the case of this deemed licence, officers were unable to complete the application due to the temporary suspension of HMO inspections and subsequent administrative delays related to the Covid pandemic.</p> <p>3.2 On the 27 July 2021, 10 December 2021 and the 12 January 2022 reminder letters were sent to Mr. Daniel Brennan informing him of the need to apply to renew the licence.</p> <p>3.3 On the 2 March 2022 an application for a Temporary Exemption Notice "TEN" was received. The application was subsequently refused on the 9 March 2022 as the steps specified in the application were not sufficient to secure that the property ceased to be an HMO.</p> <p>3.4 On the 11 March 2022 a further TEN application was received and granted on the 18 March 2022.</p> <p>3.5 On the 09 May 2022 an HMO licence application was received from the owners of the accommodation.</p> <p><b><u>Key Issues</u></b></p> <p>3.6 Pursuant to the 2016 Act, the Council may only grant a licence if it is satisfied that:</p> <ul style="list-style-type: none"> <li>a) the occupation of the living accommodation as an HMO would not constitute a breach of planning control;</li> <li>b) the owner, and any managing agent of it, are fit and proper persons;</li> <li>c) the proposed management arrangements are satisfactory);</li> <li>d) the granting of the licence will not result in overprovision of HMOs in the locality;</li> <li>e) the living accommodation is fit for human habitation and— <ul style="list-style-type: none"> <li>(i) is suitable for occupation as an HMO by the number of persons to be specified in the licence, or</li> <li>(ii) can be made so suitable by including conditions in the licence.</li> </ul> </li> </ul> <p><b><u>Planning</u></b></p> <p>3.7 As this is a new application the Council's Planning Service was consulted. It confirmed that a Certificate of Lawfulness of Existing Use or Development ("CLEUD") was granted with the planning reference LA04/2019/2417/LDE.</p>

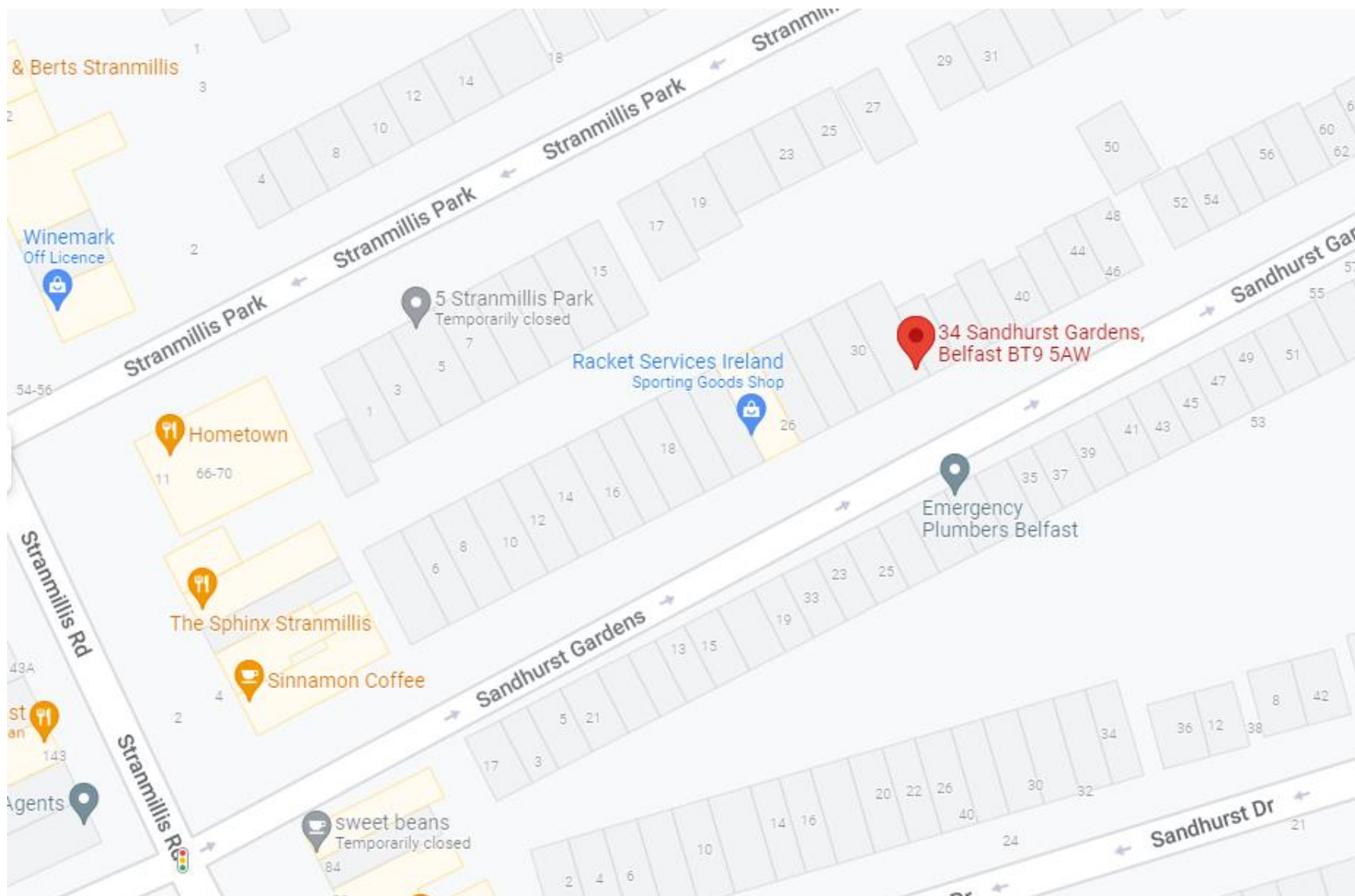
	<p><b><u>Fitness</u></b></p>
3.8	When considering the fitness of an applicant the Council must have regard to any offences concerning fraud/ dishonesty, violence, drugs, human trafficking, firearms, sexual offences, unlawful discrimination in, or in connection with, the carrying on of any business; or 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.
3.9	<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"> <li>(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;</li> <li>(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;</li> <li>(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 and;</li> <li>(d) Enforcement Unit (“EU”) - who have confirmed that in relation to litter and waste, there was a fixed penalty notice issued in November 2020.</li> </ul>
3.10	The Applicants and Managing Agent have confirmed that they have not been convicted of any relevant offences as set out at paragraph 3.3 of this report.
3.11	The Applicants or Managing Agent have not been convicted of any HMO related offences by the Council. The EPU, PHHU and EU, solely in respect of their statutory functions, have confirmed that there are no relevant, previous convictions in respect of the Applicants, Managing Agent or occupants. Due to data protection issues which have 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.
3.12	Officers are not aware of any other issues relevant to the Applicants' fitness.
	<p><b><u>Overprovision</u></b></p>
3.13	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 2/19 Stranmillis” as defined in the document “Houses in Multiple Occupation (HMOs) Subject Plan for Belfast City Council Area 2015.
3.14	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.
3.15	On the date of assessment, 13 June 2022 there were a total of 342 licensed HMOs in HMO policy area “HMO 2/19 Stranmillis” which equates to just over 45% of the total dwelling units, which in turn exceeds the 30% development limit as set out at Policy HMO 1. The 342 licensed HMOs have a capacity of 1467 persons.

	The total number of dwelling units in a Policy Area is measured by Ordnance Survey's Pointer database.
3.16	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.
3.17	The Council recognises that there is a need for intensive forms of housing and to meet this demand, HMOs are an important component of this housing provision. HMOs, alongside other accommodation options within the private rented sector, play an important role in meeting the housing needs of people who are single, who have temporary employment, students, low-income households and, more recently, migrant workers.
3.18	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."
3.19	On the 15 June 2022, 9 licensed HMOs were advertised as for rent on the website PropertyNews.com in BT9, of those which represented 34 bedspaces. Of those 2 were within HMO policy area "HMO 2/19 Stranmillis". From the information provided on the website this represented 8 bed spaces within the policy area. Availability was immediate through to the end of September 2022.
3.20	A further examination of the PropertyNew.com website took place on the 12 August 2022 at which time 10 licensed HMO were advertised in BT9 representing 41 bedspaces, 2 of which were in HMO policy area "HMO 2/19 Stranmillis" comprising 8 bedspaces.
3.21	Anecdotal evidence from conversations with HMO managing agents suggest that that there is currently a lack of HMO accommodation available in the locality. It is too early to tell whether this is a temporary problem or evidence of an emerging long-term supply issue.
3.22	The fact that the use of the property as an 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 an HMO.
3.23	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.
	<b><u>Objections</u></b>
3.24	No objections have been received in relation to this application.
	<b><u>Attendance</u></b>
3.25	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><b><u>Suitability of the premises</u></b></p>
3.26	<p>The accommodation was certified as complying with the physical standards for an HMO for 3 persons (2 other rooms are below the minimum bedroom size of 6.5m<sup>2</sup>) by a technical officer from the NIHMO service, on the 28 February 2022. The previous deemed licence had a permitted occupancy of 5 persons.</p>
	<p><b><u>Response from the Applicants to the notice of proposed decision</u></b></p>
3.27	<p>At the time of writing this report the licence applicants had not submitted a response to the notice of proposed decision.</p>
	<p><b>Financial and Resource Implications</b></p>
3.28	<p>None. The cost of assessing the application and officer inspections are provided for within existing budgets.</p>
	<p><b>Equality and Good Relations Implications</b></p>
3.29	<p>There are no equality or good relations issues associated with this report.</p>
<b>4.0</b>	<p><b>Appendices – Documents Attached</b></p>
	<ul style="list-style-type: none"> <li>• Appendix 1 – Location Map</li> <li>• Appendix 2 – HMO policy area “HMO 2/19 Stranmillis”</li> <li>• Appendix 2 – Notice of Proposed Decision dated 20 May 2022</li> </ul>

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## Appendix 1 – Location Map – 34 Sandhurst Gardens, Belfast, BT9 5AW



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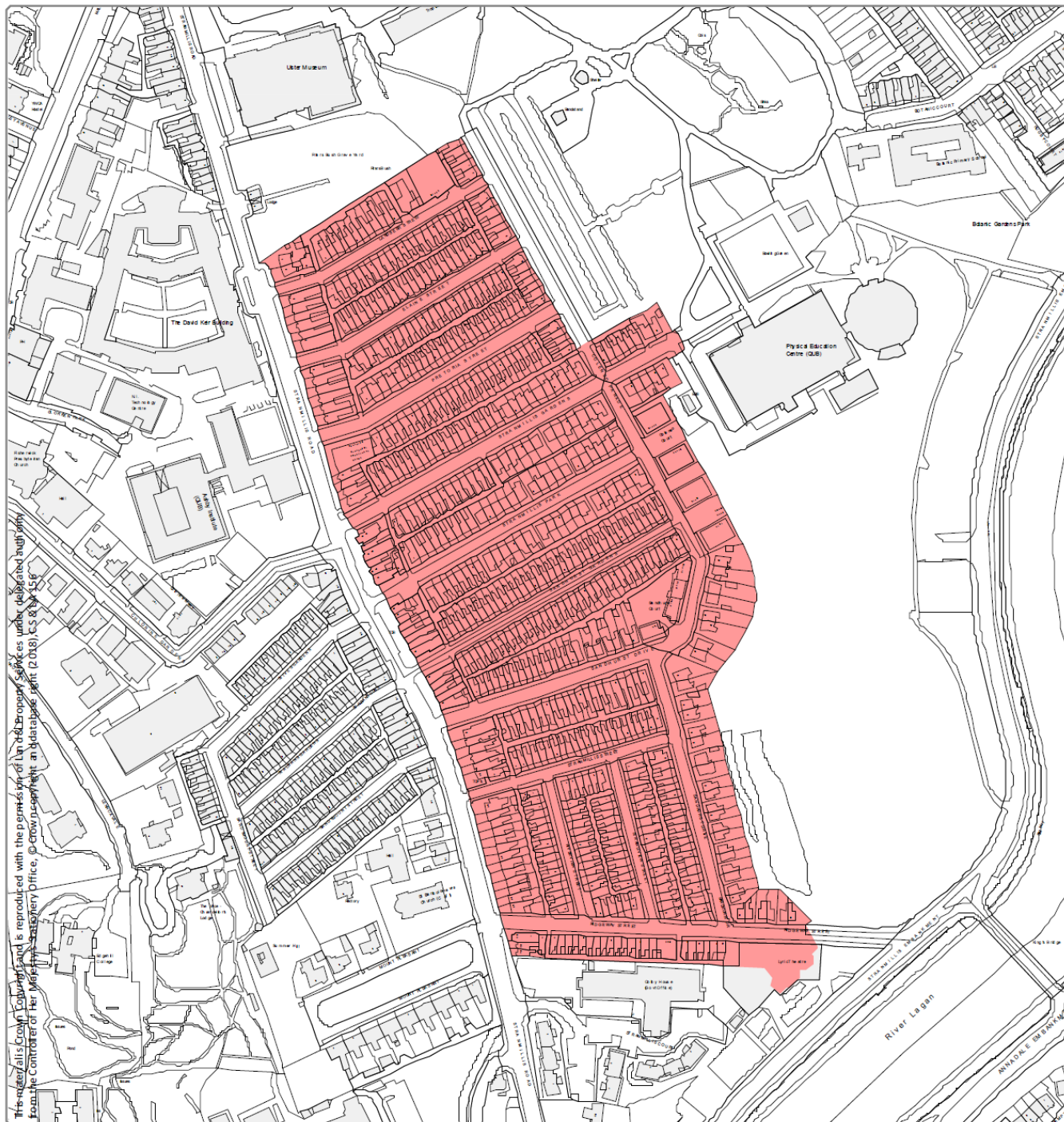
## Appendix 2 – HMO policy area “HMO 2/19 Stranmillis”

DPS023Q



**Belfast**  
City Council

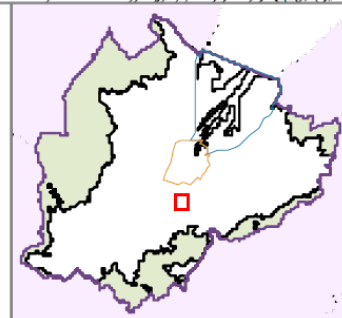
**TRANSITIONAL PERIOD PLAN DESIGNATIONS**  
**HMO POLICY AREA**



**Designation Ref:** HMO 2/19  
**Location:** STRANMILLIS

Source: Draft Belfast Metropolitan Area Plan 2015 in its most advanced stage prior to formal adoption  
Note: Only the above Designation Ref is shown on this map

Scale 1:3,500



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<b>Subject:</b>	<b>Application for a New Licence to operate a House of Multiple Occupation for 38 Wolseley Street, Belfast, BT7 1LG</b>
<b>Date:</b>	17 August 2022
<b>Reporting Officer:</b>	Kevin Bloomfield, HMO Unit Manager, Ext. 5910
<b>Contact Officer:</b>	Kevin Bloomfield, HMO Unit Manager, Ext. 5910 Nora Largey, City Solicitor, Ext. 6049

<b>Is this report restricted?</b>	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
<b>Is the decision eligible for Call-in?</b>	Yes <input checked="" type="checkbox"/>	No <input 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
	38 Wolseley Street, Belfast, BT7 1LG	9156	Mr Gareth Macklin & Ms Cara Macklin	None
1.2	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.			
2.0	Recommendation			
2.1	Taking into account the information presented Committee is asked to hear from the Applicant and make a decision to either:  (i)     Grant the application, with or without any special conditions; or (ii)    Refuse the application.			

	<b><u>Notice of proposed decision</u></b>
2.2	On the 27 June 2022, pursuant to Paragraph 9 of Schedule 2 of the Houses in Multiple Occupation Act (Northern Ireland) 2016 (“the 2016 Act”), officers issued a Notice of Proposed Decision to the Applicants. <b>Appendix 3</b>
2.3	The Notice of Proposed Decision stated that the council proposed to <b>refuse</b> the licence on the grounds of <b>overprovision</b> . A statement of reasons for the proposal was included in the Notice of Proposed Decision.
2.4	If the application is refused, the Applicants have a right of appeal to the County Court. An appeal must be lodged within 28 days of formal notification of the Council’s decision.
<b>3.0</b>	<b>Main report</b>
	<b><u>Background</u></b>
3.1	The property had the benefit of an HMO licence in the name of the existing owner which expired on the 04 May 2021.
3.2	On the 07 April 2021 a reminder letter was sent to Mr. Gareth Macklin informing him of the need to apply to renew the licence.
3.3	On the 09 March 2022 an HMO licence application was received from the Mr. Gareth Macklin, Ms. Cara Macklin was later added as a proposed joint licensee.
3.4	An application for a temporary exemption notice was received on the 06 April 2022 which was granted until 12 July 2022 and further extended until 29 September 2022.
	<b><u>Key Issues</u></b>
3.5	Pursuant to the 2016 Act, the Council may only grant a licence if it is satisfied that: <ul style="list-style-type: none"> <li>a) the occupation of the living accommodation as an HMO would not constitute a breach of planning control;</li> <li>b) the owner, and any managing agent of it, are fit and proper persons;</li> <li>c) the proposed management arrangements are satisfactory);</li> <li>d) the granting of the licence will not result in overprovision of HMOs in the locality;</li> <li>e) the living accommodation is fit for human habitation and— <ul style="list-style-type: none"> <li>(i) is suitable for occupation as an HMO by the number of persons to be specified in the licence, or</li> <li>(ii) can be made so suitable by including conditions in the licence.</li> </ul> </li> </ul>
	<b><u>Planning</u></b>
3.6	As this is a new application the Council’s Planning Service was consulted. It confirmed that a Certificate of Lawful Existing Use or Development (“CLEUD”) was granted with the planning reference <b>LA04/2022/0120/LDE</b> .

	<b><u>Fitness</u></b>
3.7	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.
3.8	<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"> <li>(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;</li> <li>(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;</li> <li>(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 and;</li> <li>(d) Enforcement Unit ("EU") - who have confirmed that in relation to litter and waste, there was a fixed penalty notice issued in Jan 2022.</li> </ul>
3.9	The Applicants have confirmed that they have not been convicted of any relevant offences as set out at paragraph 3.3 of this report.
3.10	The Applicants has not been convicted of any HMO related offences by the Council. The EPU, PHHU and EU, solely in respect of their statutory functions, have confirmed that there are no relevant, previous convictions in respect of the Applicants, Managing Agent or occupants. Due to data protection issues which have 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.
3.11	Officers are not aware of any other issues relevant to the Applicant's fitness.
	<b><u>Overprovision</u></b>
3.12	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, Rugby" as defined in the document "Houses in Multiple Occupation (HMOs) Subject Plan for Belfast City Council Area 2015.
3.13	Legal Services have 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.

3.14	On the date of assessment, 13 June 2022 there were a total of 1107 licensed HMOs in HMO policy area "HMO 2/22 Botanic, Holylands, Rugby". This equates to between 45% and 46% of the total dwelling units of 2409 within the policy area. Which in turn exceeds the 30% development limit as set out at Policy HMO 1. The 1107 licensed HMOs have a capacity of 5020 persons.
3.15	The total number of dwelling units in a Policy Area is measured by Ordnance Survey's Pointer database.
3.16	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.
3.17	On the 24 June 2022, 10 licensed HMOs were advertised as for rent on the website PropertyNews.com in BT7, of those which represented 48 bedspaces. Of those 7 were within HMO policy area "HMO 2/22 Botanic, Holylands and Rugby". From the information provided on the website this represented 34 bed spaces within the policy area. Availability was immediate through to the end of September 2022.
3.18	A further examination of the PropertyNew.com website took place on the 15 August 2022 at which time 4 licensed HMO were advertised in BT7 representing 20 bedspaces, 2 of which were in HMO policy area "HMO 2/22 Botanic, Holylands and Rugby" comprising 10 bedspaces.
3.19	Anecdotal evidence from conversations with HMO managing agents suggest that that there is currently a lack of HMO accommodation available in the locality. It is too early to tell whether this is a temporary problem or evidence of an emerging long-term supply issue.
3.20	The fact that the use of the property as an 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 an HMO.
3.21	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.
	<b><u>Objections</u></b>
3.22	No objections have been received in relation to this application.
	<b><u>Attendance</u></b>
3.23	The applicant and/or their representatives will be available to discuss any matters relating to the licence application should they arise during your meeting.



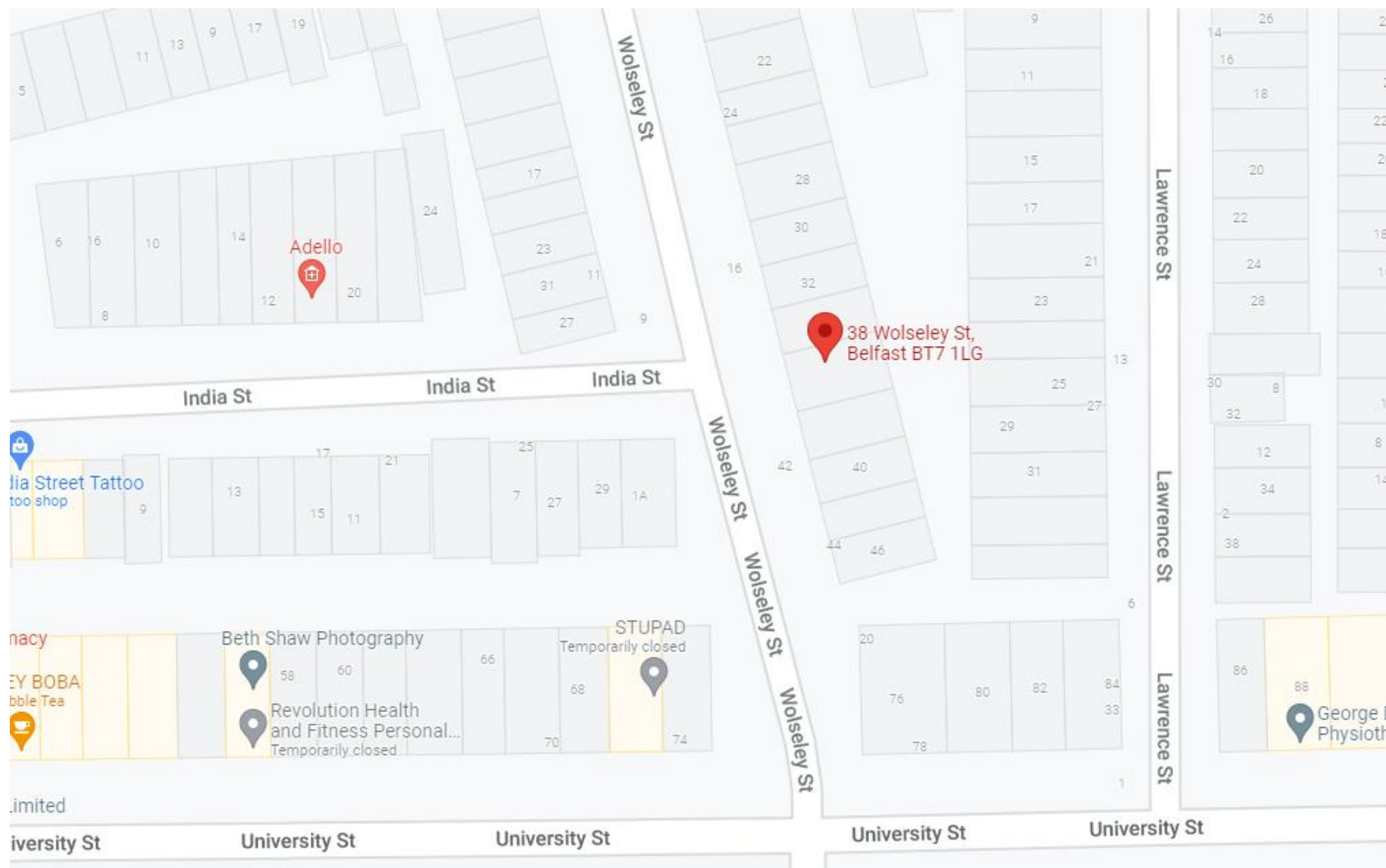
	<p><b><u>Suitability of the premises</u></b></p> <p>3.24 The accommodation was inspected on the 13 April 2022 and several defects were notified to the applicant; those works remain outstanding. If the licence is granted members are asked to permitted officers to include the completion of the works as a condition of the licence. <b>Appendix 4</b></p> <p><b><u>Response from the Applicants to the Notice of Proposed Decision</u></b></p> <p>3.25 On the 26 July 2022, representations were received from O'Hare Solicitors on behalf of the Applicants <b>Appendix 5</b>. The Applicants contend that the basis for the proposed refusal of the application is flawed as the decision fails to reflect the central fact that the relevant property operated as an HMO before 2003 and up to 2021 without issue.</p> <p>3.26 The applicant advised that when he was drafting a renewal application in May 2021, he was under the misconception that a CLEUD was required in order to complete the renewal process.</p> <p>3.27 The representations argue that section 8(2)(d) of the 2016 Act is not intended to have effect on areas where there is already overprovision, and where the property has been operating as an HMO previously and go on to state that the granting of this application cannot logically be deemed to "result" in overprovision in the area in the circumstances.</p> <p>3.28 The representations also highlight that the applicant is aware from conversations with his agent that, at present, there is no availability of HMO properties in this area due to demand.</p> <p>3.29 Issue is also taken with the Council's adoption of the 2015 Subject Plan for the purpose of the Council's assessment of overprovision.</p> <p>3.30 Additional representations were received on the 3 August 2022 which relate to the extenuating circumstances relating to the Applicants' core business at <b>Appendix 6</b></p> <p><b><u>Officers' comments further to the applicant's response</u></b></p> <p>3.32 In relation to the comment from the applicants' solicitor that his client was under the misconception that the CLEUD must be in place before the application for renewal of the licence could be lodged I would refer members to the Council's Licensing Committee meetings in December 2020 and January 2021, where members took an agreed approach in relation to a very limited number of HMOs where an owner had not applied to renew their licence on time because of a generally held misconception that Planning Permission or a Certificate of Lawfulness of Existing Use or Development ("CLEUD") was needed before they could do so.</p> <p>3.33 In light of this, members agreed that all new applications due to expire before 1st March 2021, where the premises have previously operated as an HMO and had the benefit of planning permission and/or a CLEUD, would not be considered to result in overprovision:-</p>
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3.34	This application was received on the 09 March 2022 which is over a year after the cut-off date of the 1 March 2021, therefore the application could not have been considered in accordance with members agreed decision.
3.35	The Council has no record of a draft application to renew the licence in May 2021. In response to the representation that the applicant believed it was necessary to submit plans and evidence of a CLEUD, the online application form makes it clear that “In relation to renewal applications (to be treated as a renewal the application must be made before the expiry of the previous licence) the issue of planning control is excluded from the application process
3.36	Additionally, the guidance notes outlined at the commencement of the application form contain a mandatory requirement for the applicants to confirm that they have read and approved the guidance notes which provide <b>“Pursuant to Section 20(4)(a) a breach of planning control cannot be taken into consideration when considering a renewal application”</b> .
3.37	As the current application was received after the expiry of the previous licence, this application is a new licence application and, in accordance with section 8(2)(d) of the 2016 Act, the Council <b>may grant the licence only</b> if it is satisfied that the granting of the licence will not result in over provision of HMOs in the locality in which the living accommodation is situated.
3.38	When considering overprovision, the council <b>must</b> have regard to: (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.
3.39	Officers recognise that there is a high demand for HMO type accommodation in HMO policy area “HMO 2/22 Botanic, Holylands, Rugby” at this time. However, in Officers view, the evidence available does not demonstrate a clear need for HMO accommodation at this time. The Committee is entitled to adopt a precautionary approach as this is the only occasion in respect of which overprovision can be taken into account in an area where the level of HMO accommodation already exceeds the limit set out in the HMO Subject Plan by over 50%.
3.40	In relation to the criticism regarding reliance upon the HMO Subject Plan, the plan is a publicly available planning policy document which is used to assess planning applications for HMOs in Belfast. The overall aim of the Subject Plan is to provide a planning framework for HMO development in facilitating sustainable growth and encouraging balanced communities by promoting a mix of housing tenures and types and the creation of quality-built environments which contribute to the achievement of safe, complete and balanced communities for people to live in.
3.41	Officers are of the view that it is entirely reasonable and rationale to use this Plan as a basis for assessing overprovision. This allows for some level of certainty for property owners, prospective purchasers and the general public in relation to the acceptable level of HMO properties in a particular area. Regardless of the fact that the Council did not draft this document, it is a material consideration and one which the Council is entitled to have regard to. The weight to be attached to the HMO Subject Plan is a matter for the Committee having regard to all other material considerations.

3.42	Legal Services have confirmed that section 20(2) of the 2016 Act makes it clear that an application to renew a licence must be made before the licence ceases to have effect.
3.43	Therefore, members must consider the above provisions at 3.38 of this report, regarding overprovision, and cannot simply ignore same because of the representations made by the Applicant concerning his personal circumstances and reasons for failing to renew his previous licence on time.  <b><u>Financial and Resource Implications</u></b>
3.44	None. The cost of assessing the application and officer inspections is provided for within existing budgets.  <b><u>Equality and Good Relations Implications</u></b>
3.45	There are no equality or good relations issues associated with this report.
<b>4.0</b>	<b>Appendices – Documents Attached</b>
	<ul style="list-style-type: none"> <li>• Appendix 1 – Location Map</li> <li>• Appendix 2 – HMO policy area “HMO 2/22 Botanic, Holylands and Rugby”</li> <li>• Appendix 3 – Notice of Proposed Decision dated 27 June 2022</li> <li>• Appendix 4 – Outstanding Works</li> <li>• Appendix 5 – Representation received on 26 July 2022 in response to the proposed decision.</li> <li>• Appendix 6 – Additional representations received 3 August 2022</li> </ul>

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## Appendix 1 – Location Map – 38 Wolseley Street, Belfast, BT7 1LG



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of the Local Government Act (Northern Ireland) 2014.

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of the Local Government Act (Northern Ireland) 2014.

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<b>Subject:</b>	<b>Application for a New Licence to operate a House of Multiple Occupation for 118 University Avenue, Belfast, BT7 1GZ</b>
<b>Date:</b>	17 August 2022
<b>Reporting Officer:</b>	Kevin Bloomfield, HMO Unit Manager, Ext. 5910
<b>Contact Officer:</b>	Kevin Bloomfield, HMO Unit Manager, Ext. 5910 Nora Largey, City 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 an application for a Licence permitting the use of premises as a House in Multiple Occupation (HMO).			
	Premises	Application No.	Applicant(s)	Managing Agents
	118 University Avenue, Belfast, BT7 1GZ	9272	Mr Ignatius McCluskey	M&M Property Services
1.2	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.			
2.0	Recommendation			
2.1	Taking into account the information presented Committee is asked to hear from the Applicant and make a decision to either:  <div><div>(i)</div><div>Grant the application, with or without any special conditions; or</div></div> <div><div>(ii)</div><div>Refuse the application.</div></div> <b><u>Notice of proposed decision</u></b>			
2.2	On the 26 July 2022, 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. <b>Appendix 3</b>			

2.3	The Notice of Proposed Decision stated that the Council proposed to <b>refuse</b> the licence on the grounds of <b>overprovision</b> . A statement of reasons for the proposal was included in the Notice of Proposed Decision.
2.4	If the application is refused, the Applicant has a right of appeal to the County Court. An appeal must be lodged within 28 days of formal notification of the Council's decision.
<b>3.0</b>	<b>Main report</b>
	<b><u>Background</u></b>
3.1	The property had the benefit of an HMO licence in the name of the existing owner which expired on the 03 April 2019.
3.2	On the 25 February 2021 an HMO licence application was received from Mr. Ignatius McCluskey which was subsequently rejected on the 2 March 2021 as the granting would constitute a breach of planning control
3.3	A further application was received on the 12 May 2022.
	<b><u>Key Issues</u></b>
3.4	<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"> <li>a) the occupation of the living accommodation as an HMO would not constitute a breach of planning control;</li> <li>b) the owner, and any managing agent of it, are fit and proper persons;</li> <li>c) the proposed management arrangements are satisfactory);</li> <li>d) the granting of the licence will not result in overprovision of HMOs in the locality;</li> <li>e) the living accommodation is fit for human habitation and— <ul style="list-style-type: none"> <li>(i) is suitable for occupation as an HMO by the number of persons to be specified in the licence, or</li> <li>(ii) can be made so suitable by including conditions in the licence.</li> </ul> </li> </ul>
	<b><u>Planning</u></b>
3.5	As this is a new application the Council's Planning Service was consulted. It confirmed that a Certificate of Lawfulness of Existing Use or Development ("CLEUD") was granted on the 28 April 2022 with the planning reference LA04/2021/0616/LDE.
	<b><u>Fitness</u></b>
3.6	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.

3.7	<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"> <li>(a) Environmental Protection Unit ("EPU") - who have confirmed that in relation to night-time noise there was a noise warning notice issued on 15 November 2017;</li> <li>(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;</li> <li>(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 and;</li> <li>(d) Enforcement Unit ("EU") - 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;</li> </ul>
3.8	The Applicant has confirmed that they have not been convicted of any relevant offences as set out at paragraph 3.6 of this report.
3.9	The Applicant has not been convicted of any HMO related offences by the Council. The EPU, PHHU and EU, 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 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.
3.10	Officers are not aware of any other issues relevant to the Applicant's fitness.
	<b><u>Overprovision</u></b>
3.11	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, Rugby" as defined in the document "Houses in Multiple Occupation (HMOs) Subject Plan for Belfast City Council Area 2015.
3.12	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.
3.13	On the date of assessment, 22 July 2022 there were a total of 1105 licensed HMOs in HMO policy area "HMO 2/22 Botanic, Holylands, Rugby". This equates to just under 46% of the total dwelling units of 2409 within the policy area. Which in turn exceeds the 30% development limit as set out at Policy HMO 1. The 1105 licensed HMOs have a capacity of 5008 occupants.

3.14	The total number of dwelling units in a Policy Area is measured by Ordnance Survey's Pointer database.
3.15	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.
3.16	The Council recognises that there is a need for intensive forms of housing and to meet this demand, HMOs are an important component of this housing provision. HMOs, alongside other accommodation options within the private rented sector, play an important role in meeting the housing needs of people who are single, who have temporary employment, students, low-income households and, more recently, migrant workers.
3.17	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."
3.18	On the 27 July 2022, 5 licensed HMOs were advertised as for rent on the website PropertyNews.com in BT9, of those which represented 22 bedspaces. Of those 4 were within HMO policy area "HMO 2/22 Botanic, Holylands and Rugby". From the information provided on the website this represented 17 bed spaces within the policy area. Availability was from the end of August through to the start of September 2022
3.19	A further examination of the PropertyNews.com website took place on the 15 August 2022 at which time 4 licensed HMOs were advertised in BT7 representing 20 bedspaces, 2 of which were in HMO policy area "HMO 2/22 Botanic, Holylands and Rugby" comprising 10 bedspaces. Officers noted the subject premises was also listed for rent on the PropertyNew's website.
3.20	Anecdotal evidence from conversations with HMO managing agents suggest that that there is currently a lack of HMO accommodation available in the locality. It is too early to tell whether this is a temporary problem or evidence of an emerging long-term supply issue.
3.21	The fact that the use of the property as an 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 an HMO.
3.22	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.

	<p><b><u>Objections</u></b></p>
3.23	No objections have been received in relation to this application.
	<p><b><u>Attendance</u></b></p>
3.24	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><b><u>Suitability of the premises</u></b></p>
3.25	The accommodation was inspected on the 20 May 2022 and several defects were notified to the applicant; those works remain outstanding. If the licence is granted members are asked to permitted officers to include the completion of the works as a condition of the licence. <b>Appendix 4</b>
	<p><b><u>Response from the Managing Agent to the notice of proposed decision</u></b></p>
3.26	On the 27 July 2022 representations were received from Mr Michael McMahon of M&M Property Services <b>Appendix 5</b> . The manager questions why the HMO unit advise the applicant to apply for a CLEUD to renew the “out of time” application.
3.27	The representation further question why a named premise was not refused on the same grounds.
3.28	On 12 August 2022, McCann & McCann Solicitors submitted a written response on behalf of the applicant to the Notice of Proposed Decision in which they provide representations and commentary on overprovision and the specifics of the application. <b>Appendix 6</b>
3.29	The representations state that there is ample evidence that there is a large demand for HMO properties in the locality and the Council should take into account the fact that there is a huge demand without the appropriate supply.
3.30	<p>McCann &amp; McCann Solicitors make the point that this application is one in which the Council can reach an exceptional decision on the following grounds:-</p> <ul style="list-style-type: none"> <li>A. The HMO Registration Certificate for this property expired on 3<sup>rd</sup> April 2019, and the applicant under the legislation that came into force on 1<sup>st</sup> April 2019 had to lodge his real application prior to that date. This was new practice from that which was in previous existence under the old HMO Legislation.</li> <li>B. The applicant in this case held the misconception that Planning Permission was required for a renewal of a Licence. You will be aware that the Council was providing advice to renewals that they required Planning Permission until a threatened Judicial Review forced the Council to change their minds in September 2019.</li> <li>C. On the date the registration ran out on the 3 April 2019 was a time of flux, when Belfast City Council had just recently taken over the running of the HMO Unit from the NIHE.</li> </ul>

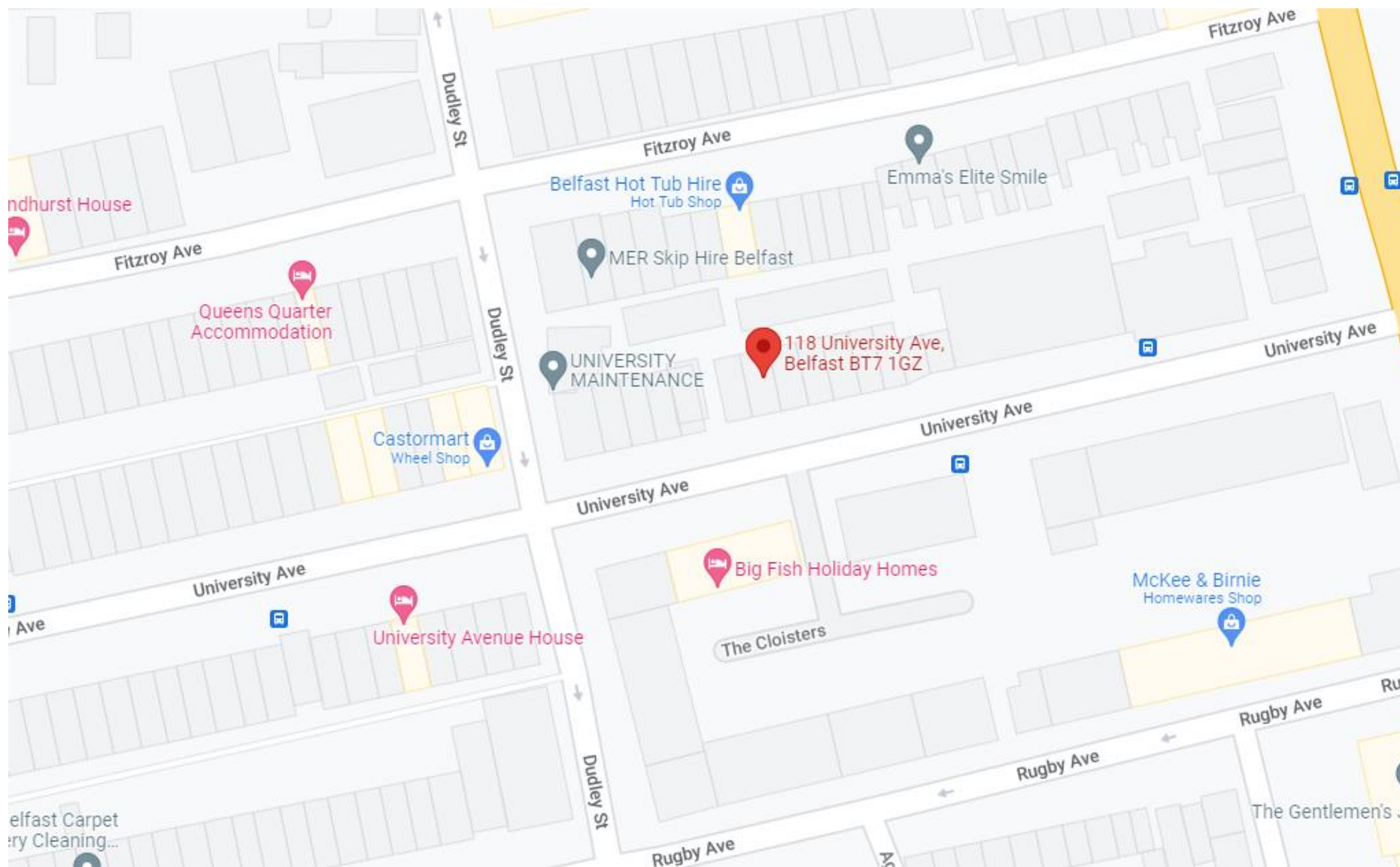
	<p>D. The applicant lodged his application on 21<sup>st</sup> February 2021, after having obtained the CLEUD. He obtained this CLEUD as in the letter dated 2<sup>nd</sup> March 2021 Mr Bloomfield advised him that he required to have planning in place, and he therefore obtained this. This advice, which arguably was correct as of 2 March 2021, was clearly not correct as at 3<sup>rd</sup> April 2019.</p> <p>E. The applicant's case should be considered under the number of cases which have colloquially referred to as those cases which fall within the "amnesty". This relates to a decision of the Licence Committee on 20<sup>th</sup> January 2021 that allowed any "out of time applications" to be renewed. The basis of these renewals was that there was a generally held misconception that planning was required before an application for renewal could be submitted. This case is on all fours with that amnesty in that it is a property that had the benefit of an HMO registration for many years, and had proper advice been given in April 2019 then the applicant would have renewed the application without having to obtain planning or consider overprovision.</p> <p><b><u>Officers' comments further to the applicant's response</u></b></p>
3.31	There is no provision within the 2016 Act for an "out of time" application and as the current application was received after the expiry of the previous licence, this application is a new licence application and, in accordance with section 8(2)(d) of the 2016 Act, the Council <b>may grant the licence only</b> if it is satisfied that the granting of the licence will not result in an overprovision of HMOs in the locality in which the living accommodation is situated.
3.32	When considering overprovision, the Council <b>must</b> have regard to: (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.
3.33	On receipt of the application for a new licence, submitted by Mr. Ignatius McCluskey, on the 25 February 2021, officers checked with the Council's planning service who on the 2 March 2021 confirmed that the premises did not have planning permission to operate as an HMO.
3.34	Officers wrote to the applicant on the 2 March 2021 pursuant to paragraphs 5 - 7 of schedule 2 of the 2016 Act refusing the application as the Council was not satisfied that the occupation of the living accommodation as an HMO would not constitute a breach of planning control (within the meaning given by section 131 of the Planning Act (Northern Ireland) 2011). <b>Appendix 7</b>
3.35	The representation further questioned why another named property was not refused on the same grounds as are proposed here. However, while officers are unable to discuss the details of the application referred to, it is clear that the particular circumstances of that application are not relevant here.
3.36	In relation to the submission from McCann & McCann Solicitors that this application is one that the Council can reach an exceptional decision officers note the 3 April 2019 date the previous registration expired on. However, a licence application was first

	presented on the 25 February 2021 (subsequently rejected on 2 March 2021 as there was no planning permission or a CLEUD in place) which is almost 2 years after the previous licence had expired.
3.37	When the previous licence expired on the 3 April 2019 the application form in existence at that time read " <i>In relation to renewal applications, failure to have planning permission for use of the property as an HMO will be considered when assessing whether the applicant is a fit and proper person. While this does not mean that an application will automatically be refused, applicants are advised to ensure they have the necessary permission or certificate of lawful use in place before applying for renewal of a licence</i> ".
3.38	McCann & McCann Solicitor's reference to an "Amnesty" relates to reports that came before members of the Council's Licensing Committee for consideration in December 2020 and January 2021, where members took an agreed approach in relation to a very limited number of HMOs where an owner had not applied to renew their licence on time because of a generally held misconception that Planning Permission or a CLEUD was needed before they could do so.
3.39	In light of this, members agreed that all new applications due to expire before 1st March 2021, where the premises have previously operated as an HMO and had the benefit of planning permission and/or a CLEUD, would not be considered to result in overprovision. This specific application does not fall within the scope of the approach agreed by members as the property did not have planning permission or a CLEUD in place prior to the 1 March 2021. The CLEUD was applied for on 04 March 2021 and the decision to grant the CLEUD was taken by the Council's Planning Service over a year later on the 28 April 2022 <b>Appendix 8</b>  <b><u>Financial and Resource Implications</u></b>
3.40	None. The cost of assessing the application and officer inspections is provided for within existing budgets.  <b>Equality and Good Relations Implications</b>
3.41	There are no equality or good relations issues associated with this report.
<b>4.0</b>	<b>Appendices – Documents Attached</b>
	<ul style="list-style-type: none"> <li>• <b>Appendix 1</b> – Location Map</li> <li>• <b>Appendix 2</b> – HMO policy area "HMO 2/22 Botanic, Holylands and Rugby"</li> <li>• <b>Appendix 3</b> – Notice of Proposed Decision dated 27 June 2022</li> <li>• <b>Appendix 4</b> – Outstanding Works</li> <li>• <b>Appendix 5</b> – Managers representation received on 27 July 2022 in response to the Notice of Proposed Decision.</li> <li>• <b>Appendix 6</b> – Applicant's solicitor's response to Notice of Proposed Decision</li> <li>• <b>Appendix 7</b> – Refusal of Application - Breach of Planning Control - 2 March 2021</li> <li>• <b>Appendix 8</b> – CLEUD – Date Decision Issued</li> </ul>

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## Appendix 1 – Location Map – 118 University Avenue, Belfast, BT7 1GZ



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