

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



**Belfast
City Council**

19th January, 2021

MEETING OF LICENSING COMMITTEE

Dear Alderman/Councillor,

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

You are requested to attend.

Yours faithfully,

SUZANNE WYLIE

Chief Executive

AGENDA:

1. **Routine Matters**

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

2. **Presentations**

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

3. **Delegated Matters**

- (a) Houses in Multiple Occupation (HMO) Licenses Issued Under Delegated Authority (Pages 1 - 4)
- (b) Application for a New Licence to operate a House of Multiple Occupation for 32 Stranmillis Gardens (Pages 5 - 30)

- (c) Applications for a New Licence to operate a House of Multiple Occupation for 11 Penrose Street (Pages 31 - 54)

4. **Non-Delegated Matters**

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



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

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

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

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

3.0Main report

3.1

Key Issues

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

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

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

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



Subject:	Addendum report in respect of an application for a New Licence to operate a House of Multiple Occupation for 32 Stranmillis Gardens, Belfast. BT9 5AS
Date:	20 January 2021
Reporting Officer:	Kevin Bloomfield, HMO Unit Manager, Ext. 5910
Contact Officer:	Kevin Bloomfield, HMO Unit Manager, Ext. 5910 Nora Largey, Divisional Solicitor, Ext. 6049

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

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

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

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

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

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Subject:	Applications for a New Licence to operate a House of Multiple Occupation for 32 Stranmillis Gardens, Belfast. BT9 5AS
Date:	14 October 2020
Reporting Officer:	Kevin Bloomfield, HMO Unit Manager, Ext. 5910
Contact Officer:	Kevin Bloomfield, HMO Unit Manager, Ext. 5910 Nora Largey, Divisional Solicitor, Ext. 6049

Is this report restricted?

Yes

☐

No

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Is the decision eligible for Call-in?

Yes

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No

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

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

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

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

<p>3.15</p> <p>3.16</p>	<p>On the date of assessment, 29 September 2020 there were a total of 366 licensed HMOs out of 761 dwelling units in HMO policy area “HMO 2/19 Stranmillis” which equates to 48% of the total dwelling units, which in turn exceeds the 30% development limit as set out at Policy HMO 1. The 366 licensed HMOs have a capacity of 1548 persons. The total number of dwelling units in a Policy Area is measured by Ordnance Survey’s Pointer database.</p> <p>Consequently, the council is satisfied that the granting of the HMO licence will result in overprovision of HMO accommodation in the locality of the accommodation for the purpose of section 8(2)(d) of the 2016 Act.”</p> <p><u>Financial and Resource Implications</u></p> <p>None. The cost of assessing the application and officer inspections are provided for within existing budgets.</p> <p><u>Equality and Good Relations Implications</u></p> <p>There are no equality or good relations issues associated with this report.</p>
<p>4.0</p>	<p>Appendices – Documents Attached</p>
	<ul style="list-style-type: none"> • Appendix 1 – Location Map • Appendix 2 – Objection • Appendix 3 – Notice of proposed decision • Appendix 4 – Correspondence with applicant regarding the FPN • Appendix 5 – Correspondence with applicant’s solicitor regarding the FPN • Appendix 6 – Map of HMO Policy Area “HMO 2/19 Stranmillis”

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

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

Minutes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Subject:	Applications for a New Licence to operate a House of Multiple Occupation for 11 Penrose Street, Belfast. BT7 1QX
Date:	20 January 2021
Reporting Officer:	Kevin Bloomfield, HMO Unit Manager, Ext. 5910
Contact Officer:	Kevin Bloomfield, HMO Unit Manager, Ext. 5910 Nora Largey, Divisional Solicitor, Ext. 6049

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

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

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

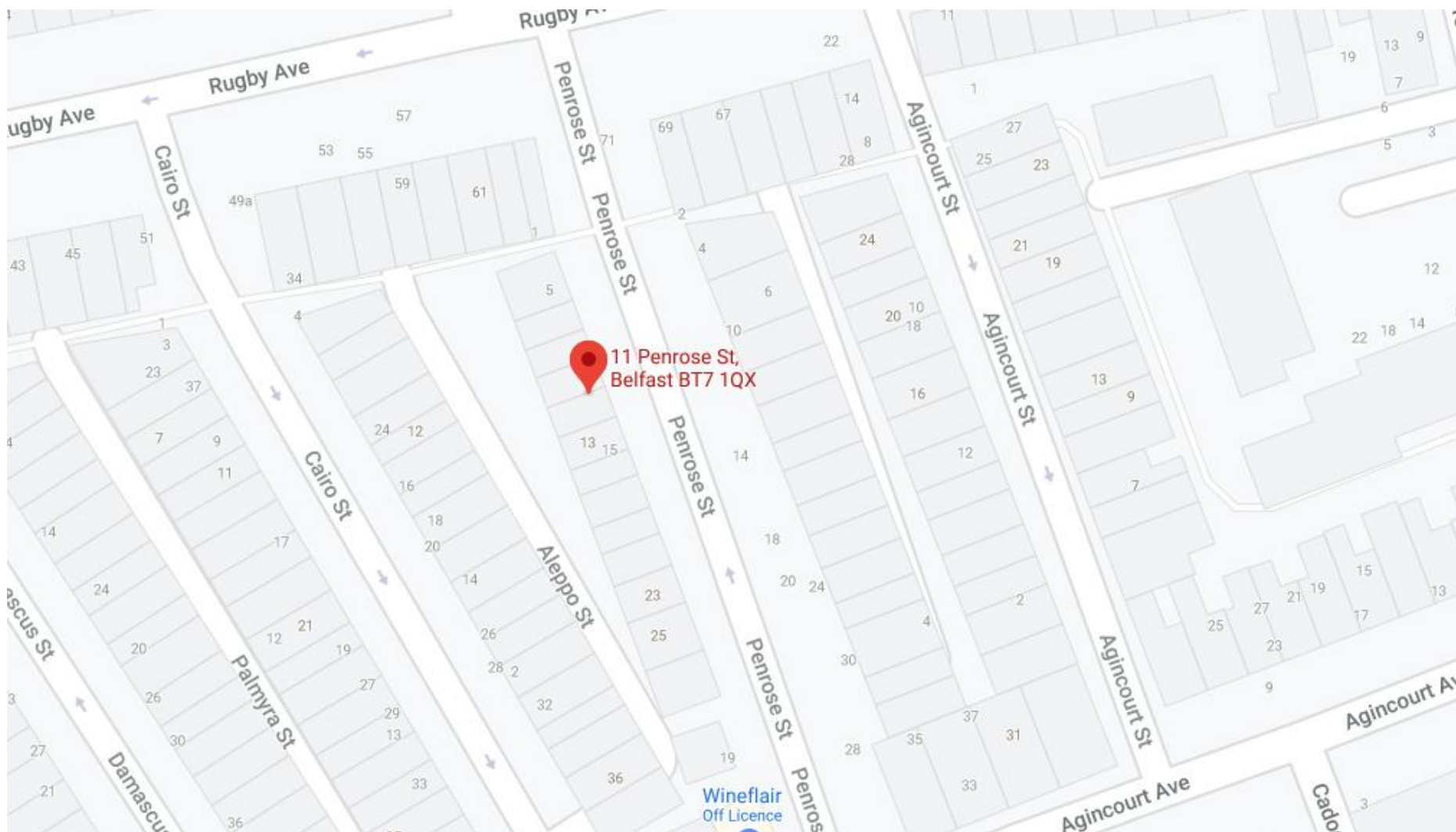
3.5	On the date of assessment, 9 October 2020 there were a total of 1250 licensed HMOs out of 2595 dwelling units in HMO policy area “HMO 2/22 Botanic, Holylands and Rugby” which equates to 52% of the total dwelling units, which in turn exceeds the 30% development limit as set out at Policy HMO 1. The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

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

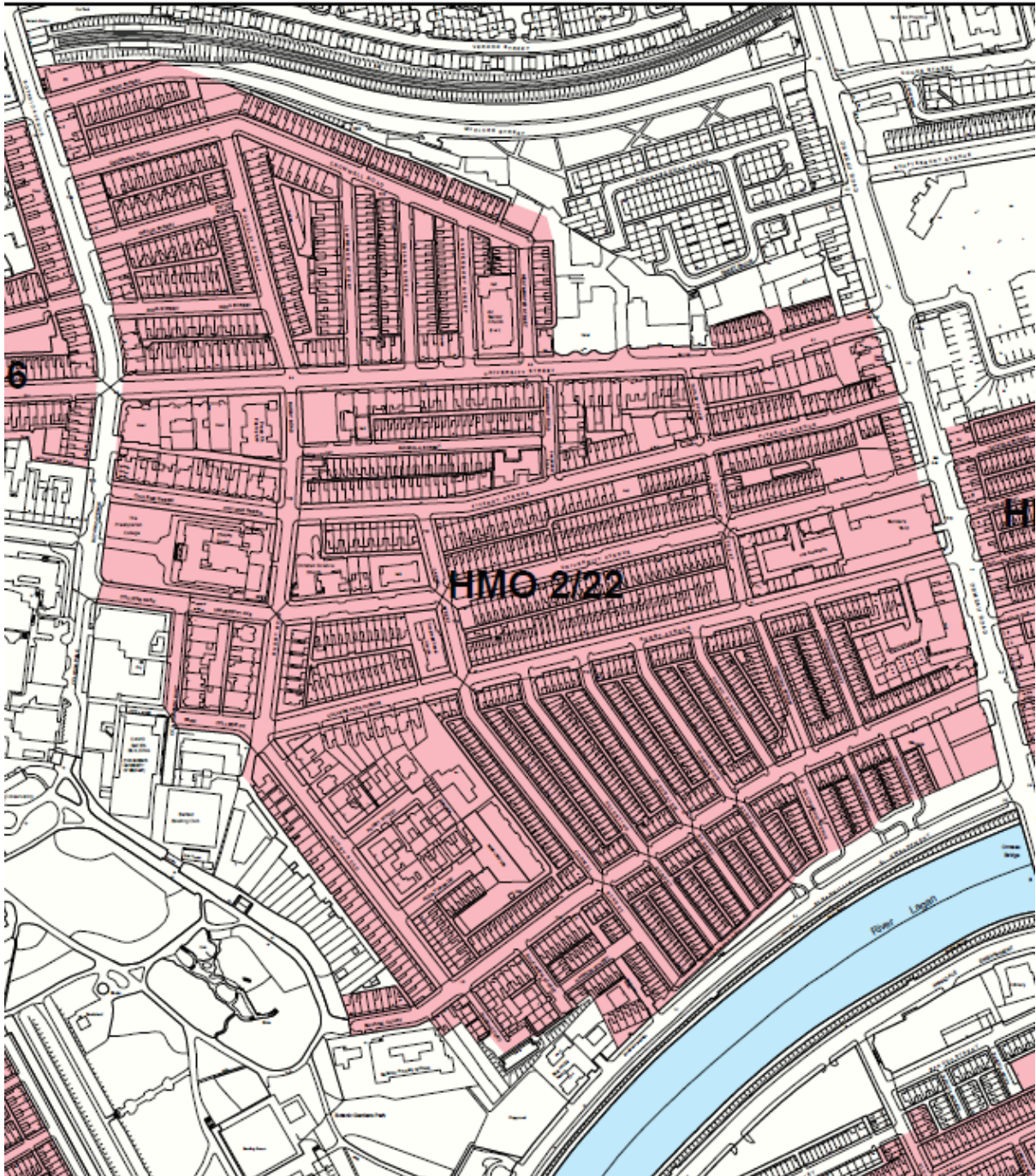
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Appendix 1 – Location Map – 11 Penrose Street, Belfast, BT7 1QX



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



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