

Licensing Committee

Wednesday, 10th March, 2021

MEETING OF LICENSING COMMITTEE HELD REMOTELY VIA MICROSOFT TEAMS

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

Also attended: Councillor Gormley.

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

Apologies

Apologies were reported on behalf of Alderman Copeland and Councillor Hutchinson.

Minutes

The minutes of the meeting of 17th February were taken as read and signed as correct. It was reported that those minutes had been adopted by the Council at its meeting on 1st March, subject to the omission of those matters in respect of which the Council had delegated its powers to the Committee.

Declarations of Interest

No declarations of interest were recorded.

Delegated Matters

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

Consideration of Designating Resolutions for Street Trading Sites

The Building Control Manger reminded the Committee that, at its meeting of 18th November, approval had been granted to initiate the statutory process for the designation of seven new street trading sites across the City, which had been identified

as a result of internal application or expressions of interest received from individuals wishing to trade from new sites.

He reported that three of those sites were before the Committee for consideration and reminded the Members that, should a proposed site become designated, the Committee would further consider any subsequent applications received for a Street Trading Licence on any of the sites.

He advised that the designation process had involved seeking comments from interested parties and relevant statutory bodies, through public advertisement and consultation and that officers had consulted with the PSNI, Department for Infrastructure (Roads), Belfast City Centre Management Company for city centre sites, and local residents and businesses.

The Building Control Manager outlined the proposals, and highlighted comments which had been received from interested parties, for the following three sites:

- Castle Place, adjacent to an existing kiosk;
- 12 Lockview Road at Belfast Boat Club; and
- King Street, second parking bay moving away from Castle Court.

Based on the information presented, the Committee agreed to:

Approve the proposal for a site to trade in commodities to be determined, but excluding the sale of hot food at Castle Place, adjacent to an already existing kiosk; and

Approve the proposal for a site to trade in hot and cold non-alcoholic beverages, confectionary, ice cream and cold food or similar commodities at 12 Lockview Road, at Belfast Boat Club.

Proposal

Moved by Councillor Smyth,
Seconded by Councillor McCullough,

Based on in the information presented, including concerns which had been raised by both the PSNI and Belfast City Centre Management, that the Committee refuses the proposal for a site to trade in hot and cold food and non-alcoholic beverages at night time, at the second parking bay, moving away from Castle Court, on King Street.

Following a vote, ten Members voted for the proposal and seven against and it was declared carried.

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

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

Applications for a New Licence to operate a House of Multiple Occupation for 17 Balfour Avenue

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 reported that on the 23rd February 2021, pursuant to Paragraph 9 of Schedule 2 of the Houses in Multiple Occupation Act (Northern Ireland) 2016, officers had issued a notice of proposed decision to the applicant setting out the terms of the proposed licence.

He further reported that the notice of proposed decision had stated that the Council proposed to refuse the licence as the Council could not be satisfied that the owner was a fit and proper person, and he referred to the following statement of reasons for refusal:

“The Council may grant a licence only if it is satisfied, in addition to other considerations, that the “...the owner of the living accommodation, and any managing agent of it, are fit and proper persons (see section 10)...” (Section 8(2)(b)).

Section 10 of the Houses in Multiple Occupation Act (Northern Ireland) 2016 (“the 2016 Act”) provides that in deciding whether a person is a fit and proper person, the Council must have regard to (a) the matters mentioned in subsections (4) to (7), and any other matter which the council considers to be relevant.

Following a referral to the NIHMO service an authorised officer called at the property on the 19th October 2020 and spoke to an individual at the front door of the property, that individual confirmed he resided in the property with 3 other unrelated individuals and paid rent to the owner Mr Michael Clarke.

On the 22 October 2020 an evidence of household notice was served on Mr Michael Clarke in accordance with Section 5(2) of the 2016 Act, inviting him to supply to the Council, within the period of 28 days beginning with the date of service of the notice, evidence that the occupants form no more than two households.

On the 26 October 2020 Mr Michael Clarke submitted an application to licence the property.

On the 17 November 2020 a response to the evidence of household notice was received in which Mr Clarke confirmed “that the current occupants of the property do form more than two households“.

Included with the response to the evidence of household notice Mr Michael Clarke indicated that he had applied in August 2019 for, and in, November 2019 a certificate of lawful use or development (CLEUD) was granted. The evidence submitted in support of the application included rental agreements which confirmed that the property had been rented out annually, to at least 3 persons, since August 2014, thereby establishing the lawful use of the property as a HMO.

On the 7 December 2020 an authorised officer from the NIHMO Unit inspected the property and established that the property was occupied as an HMO by 4 individuals who form more than 2 households. The officer further established that rent was being paid by those individuals.

Section 7 of the 2016 Act states that “Every house in multiple occupation (“HMO”) must be licensed under this Act (unless a temporary exemption notice under Section 15 is in effect in respect of it). The property is not licensed as an HMO nor is there a temporary exemption notice in effect in respect of it.

It is clear that the property was let as an HMO from 01 August 2014 until 31 March 2019 without registering it with the Northern Ireland Housing Executive (“NIHE”) as an HMO in accordance with the Statutory Registration Scheme for Houses in Multiple Occupation in Northern Ireland. Furthermore, the property was let as an HMO from 1 April 2019 until 7 December 2020 without licensing the property as an HMO pursuant to the 2016 Act.

Therein, the Council is satisfied that such matters are relevant in deciding whether Mr Michael Clarke, in his capacity as the owner of the HMO, is a fit and proper person.

Subsequently, the Council cannot be satisfied that Mr Michael Clarke is a fit and proper person, in accordance with Section 8(2)(b) and Section 10 of the 2016 Act.”

Having taken into account the information presented to Committee, and following representations made on behalf of the Applicant, and hearing from Councillor Gormley as the Objector, the Committee agreed to refuse the application.

Non-Delegated Matters

Update on the Review of Licensing Legislation

The Building Control Manager presented the Committee with an update in respect of the following report:

“1.0 Purpose of Report/Summary of Main Issues

- 1.1 To update Members on the review of Entertainments Licensing legislation, which was commenced by Minister of the Environment, Mark H Durkan MLA, in 2015.**

1.2 The process did not progress as in 2016 the Minister for Communities decided not to do any further work on the review. Following the resumption of the Assembly in 2020, the new Minister for Communities, Deirdre Hargey MLA, decided that further work on the review should be taken forward.

2.0 Recommendations

2.1 The Committee is asked to note the report.

3.0 Main Report

Key Issues

3.1 The Department for Communities has responsibility for the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985, the legislation governing Entertainments Licensing. This legislation was previously the responsibility of the Department of the Environment.

3.2 The current entertainment licensing scheme has been in place since 1985 and was reviewed in 2015 when the Minister invited key representatives from the entertainment industry to review and make recommendations on changes to the licensing system.

3.3 Members are reminded that the Committee granted approval for Trevor Martin, former Head of Building Control and Nora Largey, Divisional Solicitor, to sit on the Entertainments Licensing Review Group comprising representatives from the entertainment sector, local government, the Police Service of Northern Ireland, the Northern Ireland Fire and Rescue Service and the Department of Health.

3.4 The purpose of the review was to put in place a system that did not place an undue burden on businesses and local community groups but also ensure that the public are not put at risk and that entertainment does not cause unreasonable disturbance to people living in the area.

3.5 The aim of the review was to update both the legislation and the Model Terms and Conditions, to remove outdated provisions that no longer have beneficial effect and introduce new ones to deal with innovative issues.

3.6 The Review Group reported its findings in February 2015, making 36 recommendations for a future licensing regime. Although recommendations were subject to a public consultation and an indication given that more detailed

proposals would be developed by the Department the review ceased in 2016.

3.7 The Council, further to a Special meeting of the Licensing Committee on 23 June 2015, agreed a response to the consultation on 1 July 2015.

3.8 Some of the key recommendations of the Entertainment Licensing Review Group and the Department's response included:

- There should be a single licence covering both indoor and outdoor entertainment at a venue;
- A new Temporary Licence should be introduced to allow for one-off events by businesses or community groups;
- An entertainment licence should remain in place unless surrendered by the licence holder or revoked by the council;
- To ensure that action can be taken in response to any problems, local residents, the PSNI and NIFRS would be able to request that the council review the licence at any time over the duration of the licence;
- When considering a licence application, councils should give due consideration to preventing, or minimising, any crime and disorder issues associated with the entertainment;
- To amend the types of entertainment regulated by the Order;
- To remove the requirement to advertise in local newspapers and replace this with a notice displayed on the premises and details published on the council website;
- To enhance the powers of enforcement for councils to deal with those who fail to comply with the law; and
- Model terms, conditions and restrictions for entertainment licences should be provided by the Department.

- 3.9 As almost six years have passed since the recommendations for a new licensing regime were made the Department has re-established the Review Group to re-examine its previous work.
- 3.10 Stephen Hewitt, Building Control Manager and Nora Largey, Divisional Solicitor represent the Council on the Review Group. It is expected that the Department will consider the previous recommendations and start to formulate proposals for consideration by the Group in advance of further consultation on proposed amendments to the legislation in due course.
- Financial and Resource Implications
- 3.11 None.
- Equality or Good Relations Implications
- 3.12 There are no equality or good relations issues associated with this report.”

The Committee noted the report.

Department for Communities On-Line Questionnaire as part of the Review of Houses in Multiple Occupation Licensing Scheme

The City Protection Manager presented the Committee with an update in respect of the following report:

- “1.0 Purpose of Report/Summary of Main Issues
- 1.1 The Department for Communities has commenced its review of the Houses in Multiple Occupation (‘HMO’) Licensing Scheme as the scheme has been in operation for almost two years having come into effect on 1st April 2019. A draft response to the Review which is being conducted via an on-line Questionnaire was previously considered by members who expressed concerns that the proposed response did not adequately address the concerns and frustrations encountered by the Council in trying to regulate the existing HMO housing stock and impacts on local communities. To facilitate a revised response, officers requested a further extension of time (previously extended by Department for Communities (‘DfC’) from the 5th February to the 19th February) until 11th March 2021.
- 2.0 Recommendations
- 2.1 Taking into account the information presented, Committee is asked to note and agree the Council’s proposed response to the on-line questionnaire issued by DfC in respect of their review of the HMO licensing scheme.

2.2 Committee is also asked note and agree an additional submission to DfC to be considered as part of their review highlighting legislative anomalies and omissions with suggested amendments to improve the delivery and administration of the HMO licensing scheme.

3.0 **Main Report**

Key Issues

3.1 DfC wrote to Belfast City Council on 22nd December 2020 to indicate that it wished to seek views in relation to the review by means of an online questionnaire on the NI Direct website on the following link <https://consultations.nidirect.gov.uk/dfc-analytical-services-unit/review-of-houses-of-multiple-occupation-hmo-licenc/>.

3.2 The review questionnaire poses 9 questions and the proposed answers to the questions have been provided in Online Questionnaire response.

The HMO Review is seeking views in the following areas;

1. Improvements to the management of the HMOs
2. Improvements to the overall standards of HMOs
3. Improvements to the current fitness standards expected in HMOs
4. Improvements to the safety standards associated with living in an HMO
5. The value for money associated with the HMO licensing scheme
6. The effectiveness and accessibility of the HMO Guidance
7. Effective and timely communication between councils and landlords and councils and Department
8. Views on the administration and delivery of the scheme
9. Identification of respondent.

3.3 Officers have considered the views and representations of the Licensing Committee regarding the concerns and frustrations encountered by the Council in trying to regulate the existing HMO housing stock and their impacts and effects on local communities. The following views are now reflected in the proposed response to the Review of HMOs;

- 3.4** The Council welcomes the opportunity to contribute to the review of the HMO Licensing Scheme being undertaken by the DfC. In seeking to provide answers to the questions posed in this questionnaire, taking account of the Council's lead role in administering and delivering the scheme on behalf of all councils in Northern Ireland, the Council believes that the review also gives DfC the opportunity to review housing policy and provision through a wider lens, as the HMO licensing scheme alone does not afford the Council the opportunity to shape the city and enhance local communities.
- 3.5** Belfast City Council notes the DfC assertion within the letter accompanying the questionnaire that 'the licensing regime sought to properly and effectively regulate Houses in Multiple Occupation to ensure the health, safety and wellbeing of occupants and at the same time to minimise any negative impacts upon the neighbourhood and surrounding area'. The Council wishes to highlight that the new licensing regime has failed to achieve that aim, particularly in those areas where there is a high density of HMOs already in existence. The ongoing and live issues associated with the high density Houses in Multiple Occupation areas are well documented in terms of environmental impact and antisocial behaviour requiring significant additional resources by the Council to manage on an on-going basis. Events such as Fresher's week, Saint Patrick's Day, end of term/tenancy clear outs provide additional pressure points and heightened impacts for residents in areas of HMO intensification as well wider resource implications for the Council and other statutory agencies such as the PSNI.
- 3.6** It was noted that the HMO Review questionnaire did not afford local residents the opportunity to adequately reflect their views within the structured questions posed. The Council believes it is necessary that DfC have cognisance of the views of occupants and residents when assessing and referring to improvements associated with the new licensing regime as a narrow focus will not give a full and representative view of the HMO Licensing scheme which as highlighted above aims to take account of the impact on residents and the wider community interests.
- 3.7** It is considered that as presently drafted, the licensing scheme does not deliver on DfC's common purpose of 'Supporting People, Building Communities, Shaping Places' for the reasons set out in this report and requires fundamental review.

- 3.8** One of the main concerns emerging in Belfast since the introduction of the new licensing regime has been the inability of deal with the cumulative impacts of a disproportionately high amount of HMOs in some areas due to unnecessary limitations placed upon the council by the Act. In particular the issue of over-provision of HMO properties resulting in high density clusters remains an area of concern as the new licensing regime does not address such areas already in existence. The ramifications of over provision manifests in many ways in these affected areas resulting in the on-going problems of excessive waste generation and waste management challenges, additional street cleansing resources, fly-tipping, lack of environmental management and traffic congestion. Council has previously suggested that DfC should consider the introduction of special licensing areas, which are provided for in England pursuant to the Housing Act 2004. This would require all private rented properties to be licensed within a designated area and Council reiterates its support for such an approach to be provided for within the Act.
- 3.9** As the Department for Communities will be aware, there are a significant number of HMO properties which have not been assessed through the planning permission process (which assesses applications against The Houses in Multiple Occupation (HMOs) Subject Plan for Belfast City Council Area 2015) but instead either do not have planning permission at all or have established immunity from prosecution because they have been illegally operating as a HMO for more than 5 years and can therefore avail of a Certificate of Lawful Use
- 3.10** This means that owners can effectively evade the strict limits which are placed on HMO provision in certain areas and seems fundamentally unfair to the Council in circumstances where there are demonstrable problems associated with these high density clusters. It seems perverse that the Council must address its mind to a whole raft of matters which go to the fitness of an applicant but is explicitly directed to disregard the use of the premises as a HMO for a number of years without the benefit of planning permission, particularly where there may be a disproportionately high number of HMOs in an area.
- 3.11** It is the Council's position that the whole issue of planning permission insofar as it relates to the Act should be revisited. The legislation as drafted, i.e., by referring to 'a breach of planning control' has created uncertainty and it is submitted that the only reasonable basis upon which it can be determined that the operation of the premises would not be a breach of planning control is through the determination

of a formal application for a Certificate of Lawful Use by Planning Service. Council would therefore recommend, at the very least, that this provision should be amended to state that the Council must be satisfied that the property has planning permission or a Certificate of Lawful Use at the time of applying regardless of whether it is a grant or renewal application.

- 3.12 Notwithstanding the Council's view in relation to the need for clarity around planning permissions for the processing of all HMO applications (both renewals and new), the Council notes with concern that the current system of granting a Certificate of Lawful Use for established HMOs circumvents the ability for the Council to assess the impact of a proposed HMO, including issues such as impact on the amenity of the area, parking issues and importantly whether the proposal breaches the thresholds placed on HMOs as part of the Subject Plan. The ability to apply for a Certificate of Lawful Use effectively prevents the ability to achieve the aim of sustainable development and balanced communities.
- 3.13 The Council accepts that the system of granting a Certificate of Lawful Use falls outside the scope of the DfC Review but wishes to highlight the issue due to the impact on Houses in Multiple Occupation intensity in certain areas in Belfast. However it is aware that DfI have issued a call for evidence for review of the Planning Act (NI) 2011 and the Council asks that DfC engages in that process to highlight the difficulties caused by immunity from enforcement in respect of HMOs and the incompatibility with this given the provisions of the HMO Subject Plan and the Council's Draft Local Development Plan which also seeks to designate Housing Management Areas in which planning permission will only be granted for HMOs and/or flats/apartments where the total number combined would not exceed 20% of all dwellings within that area (see Policy HOU10 https://www.belfastcity.gov.uk/getmedia/473f71a1-e0d2-431a-971b-def39e550934/DPS001_DPS.pdf)
- 3.14 The challenges of addressing anti-social behavioural (ASB) activity in certain areas of high density properties are well rehearsed and widely known. It is accepted that the density of HMOs are not the only factor in the level of ASB but they undoubtedly contribute. It is also accepted that ASB does not occur in every HMO. However this has to be balanced against the ability of the Council to deal with ASB which is associated with areas where there is a high number of such properties, well in excess of the limits which were considered acceptable in the HMO Subject Plan.

- 3.15 Under the existing transitional arrangements from the Northern Ireland's Housing Executive's Registration Scheme to the new HMO licensing regime, it will take five years to bring all licenses under the new standard licensing conditions which includes a condition placing responsibilities on landlords to manage anti-social behaviours of their tenants. Whilst it is acknowledged that councils have the power to vary individual deemed licences, the process is cumbersome and resource intensive. The Council is requesting as part of this review that the Department for Communities consider amending the Houses in Multiple Occupation (Commencement and Transitional Provisions) Order (NI) 2019 to apply the standard conditions around ASB to all deemed licences. This would allow much more decisive action on the part of the Council and landlords alike.
- 3.16 In relation to environmental management associated with HMO properties, there has not been a noted improvement in how such properties are managed by their owners with the Council receiving on-going complaints about litter, graffiti, garden maintenance etc. resulting in the need to engage with owners. This highlights that the need to ensure that owners and agents discharge their responsibilities more effectively and will require an additional resource to continue to ensure compliance with the standard licensing conditions in this regard.
- 3.17 The costs associated with the delivery and administration of the HMO Licensing scheme are addressed as part of the review in question 5 and whilst it is acknowledged that the wider costs such as policing, waste management, enforcement and engagement fall outside the scope of the review, these costs are nonetheless significant in high density HMO areas. The Council would welcome further consideration by DfC to explore ways in which existing areas of high density HMOs can re-coup these costs.
- 3.18 In light of the concerns expressed by members in relation the HMO licensing regime, the Council have agreed that it would be beneficial for Department for Communities representatives and other relevant statutory bodies to attend a workshop to allow for further collaboration and engagement in relation to the review of the HMO Licensing scheme.
- 3.19 During the first two years of the implementation of the new HMO licensing scheme, officers have identified a range of legislative omissions and anomalies which would benefit from a review and revision, so that there is better clarity to assist the Council to regulate and administer the scheme more effectively. Officers have compiled a table detailing the

relevant sections of the HMO Act 2016 that have been identified for consideration as part is the review.

- 3.20 In conclusion, the new HMO licensing scheme has not delivered the anticipated benefits for communities and neighbourhoods where there are existing high density clusters of HMOs which in turn adversely impact on neighbourhoods and their residents resulting in environmental deterioration and anti-social behavioural activity.
- 3.21 A wider programme of multi-agency commitment and intervention such as the recently designated Special Action Area under the Councils community planning for The Wider University and The Lower Ormeau area and ongoing work through the Belfast Agenda may provide the platform to bring about transformational change through neighbourhood re-generation and tailored solutions at a local level but that should be in conjunction with a fit for purpose Act regulating the HMO Sector incorporating the changes recommended in this report and the table of suggested legislative changes as an immediate priority through this review.

Financial and Resource Implications

- 3.22 There are additional costs that have been borne by BCC in the administration, support and governance of the new regime that have impacted on budgets and resources. Therefore as part of this review Council is urgently calling for DfC to undertake a review of the financial and resource elements as highlighted in the response.

Equality or Good Relations Implications

- 3.23 There are no equality or good relations issues associated with this report.”

A number of Members intimated their frustration regarding a response which had been received to the Committee’s request to engage with the Minister for Communities, regarding to the review of the implementation and operation of the Houses in Multiple Occupation (HMO) Act (2016). The Members expressed that, whilst they were happy to engage with the officials from the Department for Communities, they would continue to pursue a meeting with the Minister.

The Committee noted the report and agreed to the Council’s proposed response to the on-line questionnaire issued by DfC in respect of their review of the HMO licensing scheme.

The Committee further agreed that an additional submission would be made to DfC, to be considered as part of their review, highlighting legislative anomalies and omissions with suggested amendments to improve the delivery and administration of the HMO licensing scheme.

Chairperson