

Licensing Committee

Wednesday, 15th September, 2021

MEETING OF THE LICENSING COMMITTEE

HELD IN THE COUNCIL CHAMBER AND
REMOTELY VIA MICROSOFT TEAMS

Members present: Councillor Donnelly (Chairperson);
Aldermen Rodgers and Sandford; and
Councillors Bradley, Bunting, Michael Collins, Howard,
Hutchinson, M. Kelly, T. Kelly, Magee, Magennis,
McAteer,
McCabe, McCusker, McKeown, Mulholland and Smyth.

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

Apologies

An apology for inability to attend was reported on behalf of Councillor McCullough.

Minutes

The minutes of the meeting of 18th August 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 September, 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 reported.

Delegated Matters

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

HMO Licences Issued Under Delegated Authority

The Committee noted a list of licences for Houses in Multiple Occupation which had been issued under the Council's Scheme of Delegation.

**Application for the Grant of a
HMO Licence – 77 Palestine Street**

The HMO Unit Manager submitted for the Committee's consideration the following report:

“1.0 Purpose of Report/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	Managing Agents
77 Palestine Street Belfast BT7 1QL	8438	Mr Padhraig Magill	M and M Property Services

- 1.2 Members are reminded that HMO 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.**

Background

- 1.3 The property had the benefit of an HMO licence in the name of the previous owner.**
- 1.4 The previous licence, pursuant to Section 28(2) of the Houses in Multiple Occupation Act (Northern Ireland) 2016 ('the 2016 Act'), ceased to have effect on 10th September 2019, when the property was purchased by Mr. Padhraig Magill. Had Mr. Magill applied for a new HMO licence before the date of transfer, the existing licence, pursuant to Section 28(3) of the 2016 Act, would have been held until his new licence application was determined.**
- 1.5 On 10th May, 2021, an HMO licence application was received from the owner of the accommodation. As this was a new application, the HMO Unit consulted with the Council's Planning Service, which, on 20th May, confirmed that a Certificate of Lawful Use or Development was granted, with the planning reference LA04/2019/1471/LDE**
- 1.6 Following an email exchange on 3rd June between officers from the HMO Unit and the applicant, Mr Magill confirmed that he has been lived in the property since September 2019 (Appendix 3). In accordance with paragraph 9 of Schedule 1 of the 2016 Act, any building which is occupied by the owner or any members of the owner's household is not a house in**

multiple occupation. As such, the building has not been an HMO since September 2019, when Mr Magill and his brother took up occupation.

1.7 Pursuant to Section 87(1) General notices of the 2016 Act, the Council specified a number of documents which are required under paragraph 1(1) or (1)(2)(h) of Schedule 2, before an application is considered valid, the last of those documents 'Proof of suitable funding arrangements' was received on 28th June, 2021. As such the application was deemed valid on 28th June, 2021.

1.8 In accordance with paragraph 12 of Schedule 2 of the 2016 Act, the Council must decide whether to grant or refuse an application for an HMO licence before the end of a period of 3 months, that 3 month period expires on 28th September, 2021.

2.0 Recommendations

2.1 Taking into account the information presented, the 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.

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

Key Issues

3.1 Pursuant to the 2016 Act, the Council may only grant a licence if it is satisfied that:

- 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:
 - (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 which on 20th May 2021, confirmed that a Certificate of Lawful Use or Development was granted with the planning reference LA04/2019/1471/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 The Legal Services Section 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, 22nd July 2021, there were a total of 1,084 licensed HMOs in HMO policy area 'HMO 2/22 Botanic, Holylands and Rugby', which equates to 47% of the total dwelling units, which in turn exceeds the 30% development limit as set out at Policy HMO 1. The 1,082 licensed HMOs have a capacity of 4,974 persons.
- 3.6 The total number of dwelling units in a Policy Area is measured by Ordnance Survey's Pointer database.
- 3.7 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.
- 3.8 The Council recognises that there is a need for intensive forms of housing and to meet this demand, Houses in Multiple Occupation 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.

- 3.9 In September 2017, the Housing Executive published the document 'Housing Market Analysis Update – Belfast City Council Area' which states that '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.'
- 3.10 On 10th August 2021, there were 10 licensed HMOs advertised for let on the website Property News in BT7, with a capacity of 47 bed spaces, of the 10 licensed properties 8 (38 bedspaces) were located in policy area 'HMO 2/22 Botanic, Holylands and Rugby'. Additionally, it was identified on the same website that there were 12 licensed HMO properties advertised for let in BT9 with a capacity of 54 bed spaces.
- 3.11 Members will be aware from BBC press reports that 'Queen's offers students £1,500 not to take up university accommodation'. The university said that due to 'unprecedented' demand accommodation in its halls was oversubscribed. Officers followed up on the press reports by contacting other Purpose-Built Managed Student Accommodation PBMSA. Student Roost confirmed that it has no accommodation across its 3 sites in Great Patrick Street, John Bell House and Swanston Houses and is now operating a waiting list. Botanic Studios confirmed that it is also completely full and has a waiting list. LIV Student Belfast indicates on its website that it is sold out.
- 3.12 A subsequent search on Property News was undertaken on 10th September 2021 and no licensed HMOs were advertised for let in BT7 or BT9. Anecdotal evidence from conversations with HMO managing agents suggest 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.
- 3.13 The fact 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.

- 3.14** 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.
- 3.15** 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.
- 3.16** The NIHMO Unit has consulted with the following units within the Council's City and Neighbourhood Services Department –
- (a)** the Environmental Protection Unit ('EPU') has confirmed that, in relation to night-time noise, there have been two noise warning notices issued on 18th September 2019 and 17th March 2020 in respect of the HMO since the change of ownership on the 10th September 2019;
 - (b)** the Environmental Protection Unit ('EPU') has 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)** the Public Health and Housing Unit ('PHHU') has 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)** the Cleansing Enforcement section (CE) has 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.

Fitness

- 3.17 The applicant and managing agent have confirmed that they have not been convicted of any relevant offences as set out at paragraph 3.15 of this report.
- 3.18 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 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.
- 3.19 Officers are not aware of any other issue relevant to the applicant's fitness.

Attendance

- 3.20 The applicant and/or their representatives will be available to discuss any matters relating to the licence application, should they arise during your meeting.

Suitability of the Premises

- 3.21 An inspection of the premises was carried out by Officers from the Service on 16th June 2021, at which time it was established that the property met the physical standards for an HMO.

Notice of Proposed Decision

- 3.22 On 28th July 2021, 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.
- 3.23 The notice of proposed decision stated that the Council proposes to refuse the licence. A statement of reasons for the proposal was included in the notice of proposed decision.

The statement of reasons outlined the following as the Council's basis for refusal:

- 3.24 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.

- 3.25 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')
- 3.26 In making this decision the Council has had 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
- 3.27 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.
- 3.28 On the date of assessment, 22 July 2021, there were a total of 1,084 licensed HMOs in HMO policy area 'HMO 2/22 Botanic, Holylands and Rugby', which equates to 47% of the total dwelling units, which in turn exceeds the 30% development limit as set out at Policy HMO 1. The 1,082 licensed HMOs have a capacity of 4,974 persons. The total number of dwelling units in a Policy Area is measured by Ordnance Survey's Pointer database.
- 3.29 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.

Analysis of Demand

- 3.30 From the date of initial assessment on 22nd July 2021, the demand for HMO accommodation in the locality has surged. Paragraphs 3.7 – 3.13 of this report highlight the most up to date information available to officers on the demand for HMO accommodation in the locality and the wider city.

Financial and Resource Implications

- 3.31 None. The cost of assessing the application and officer inspections are provided for within existing budgets.**

Equality and Good Relations Implications

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

The Committee was informed that Mr. P. Magill, the applicant, and Mr. MacDermott, his legal representative, were in attendance and they were welcomed by the Chairperson.

Mr. MacDermott informed the Committee that number 77 Palestine Street had been a House in Multiple Occupation since before 2004 and that it had been included in a list of HMOs which had been published in that year by the Northern Ireland Housing Executive and in 2015 in the HMO Subject Plan for the Belfast City Council area. The property also had the benefit of an HMO Registration Certificate, which had been issued on the introduction of the new HMO legislation in 2019 and was valid until June, 2022, and of a Certificate of Lawful Use or Development, which confirmed that there had been no planning-related issues.

He explained that Mr. Magill had purchased the property in September, 2019 and that it had been the first HMO to have been acquired by him. He had been advised by his then legal representative to seek clarification from the Council around the registration process. Upon doing so, he had been informed by a Council officer that he required a Landlord Registration Certificate, which he obtained. However, the officer had made no mention of the need to apply for an HMO Licence, which Mr. MacDermott stated was in keeping with the general uncertainty which had existed around the interpretation of the process at that time. Mr. Magill had subsequently submitted an application.

Mr. MacDermott went on to point out that the HMO Unit had, within its Notice of Proposed Decision, indicated that his client's application was being refused solely on the basis that to grant it would result in an overprovision of HMO accommodation in that locality. He referred to the fact that Section 12 of the Houses in Multiple Occupation Act (Northern Ireland) 2016 stated that the Council, in determining an application, had a mandatory duty to have regard to (i) the number and capacity of HMOs in a locality and (ii) the need for housing accommodation in that locality and the extent to which HMO accommodation was required to meet that need.

In addressing point (i), he pointed out that the Committee report had stated that, on 22nd July, 2021, HMOs had made up 47% of the total dwelling units in policy area "HMO 2/22 Botanic, Holylands and Rugby", which was higher than the 30% development limit. He explained that, in his view, the former figure was excessive, as the HMO Unit would not be aware of properties which had been transferred or sold, until such time as the HMO Licence was due for renewal.

In terms of point (ii), Mr. MacDermott confirmed that the Council was required to consider housing need at the time of the application, rather than past or future need, and he highlighted the fact that the Committee report had recognised that HMOs played an important role in meeting the housing requirements of a wide range of groups/people. The report had referred also to students being paid by one university not to take up their accommodation and to research which had been undertaken by the HMO Unit, which had found that other purpose built managed student accommodation had been oversubscribed and that there was a lack of HMO accommodation in the area where his client's property was located.

Mr. MacDermott went on to confirm that he was aware that the Council policy document stated that the 2015 HMO Subject Plan on overprovision must be taken into consideration when assessing the number of HMOs in a particular locality. He stressed that this policy was not binding upon the Council and that it would, therefore, be incorrect for more weight to be attached to it than to the Houses in Multiple Occupation Act (Northern Ireland) 2016. He concluded by stressing that, should the Committee refuse to grant the licence, it would be acting unlawfully, on the basis, firstly, that the property had previously operated as an HMO and, should the Licence be granted, there would be no increase in number in that locality and, secondly, that it would be ignoring the clearly recognised need for this type of accommodation in that area.

In response to Mr. MacDermott's submission, the Divisional Solicitor confirmed that there was no record of his client having contacted the Council at the time suggested to seek clarification around the registration process. She then pointed out that it was a matter for the Committee to take all material considerations into account when assessing the application in the context of overprovision, including the 2015 HMO Subject Plan for the Belfast City Council area and the Houses in Multiple Occupation Act (Northern Ireland) 2016. She added that, once this Licence was granted, overprovision and planning issues could not be taken into consideration in respect of renewals and the Committee was, therefore, entitled to have regard to the impact of this decision in the longer-term.

In response to a Member's query regarding consideration of the wellbeing of the local community and full-time residents, the Divisional Solicitor pointed out that, whilst there was no specific provision within the legislation which required the Committee to have regard to the balance between HMOs and long-term residents, it would be remiss of it not to consider such material considerations alongside the number and capacity of HMOs and the need for housing in a particular area.

After discussion it was

Moved by Councillor McAteer,
Seconded by Councillor T. Kelly,

That the Committee agrees to reject the application for the grant of an HMO Licence in respect of number 77 Palestine Street, on the grounds that the granting of the Licence would result in an overprovision of HMO accommodation in the locality in which the property was situated.

On a vote, twelve Members voted for the proposal and none against, with five “no votes” and it was declared carried.

Licences Issued Under Delegated Authority

The Committee noted a list of licences which had been issued and orders which had been made under the Council's Scheme of Delegation.

Application for the Grant of a Stationary Street Trading Licence - Berry Street

The Building Control Manager informed the Committee that the Council had received an application from Mrs. Anita Cooley for a Stationary Street Trading Licence to trade at an available designated site in Berry Street, 32 feet from its junction with Royal Avenue. The designation of the site allowed for the commodity to be determined, but excluded the sale of hot food, and the application complied with the designating resolution.

Mrs. Cooley had applied to sell hot and cold non-alcoholic beverages, cold food and ice cream from Monday to Sunday, between 7.30 a.m. and 3.00 p.m. and was planning to trade from a custom converted horsebox trailer, measuring 3.15 metres by 2 metres, with an 0.4 metre overhanging hatch door. The Building Control Manager pointed out that, whilst the overall size of the trailer exceeded that stipulated within the Council's Stall Design Policy, the Committee had discretion to diverge from the Policy. It had done so previously for three sites within the City centre, including this one, where the previous trader had used a trailer unit of similar proportions as that being proposed. Mrs. Cooley had not previously held a Street Trading Licence with the Council.

In terms of consultation, the Police Service of Northern Ireland had offered no objection, nor had the Department for Infrastructure Roads Service, other than to highlight the fact that patrons queuing at the stall would cause an obstruction on the footway for pedestrians. A neighbourhood consultation exercise which had been undertaken by Belfast City Centre Management had failed to receive any formal responses from businesses in the areas. It had, however, expressed concern, on the basis of previous consultations and responses, that a stall selling food from that site would be in direct competition with established businesses in that area trading in similar commodities. It had also pointed out that Berry Street had, in recent years, undergone extensive public realm improvements which had greatly enhanced the appearance of that area and had requested that the aesthetics of any new stall or trailer be taken into consideration when assessing the application.

The Committee agreed, on the basis of the information which had been presented, to grant to Mrs. Anita Cooley a Stationary Street Trading Licence to trade at the designated site in Berry Street, 32 feet from its junction with Royal Avenue, with the size of the trailer, the commodities to be sold and the hours of trading, to be as outlined above.

Chairperson