

Licensing Committee

Friday, 29th October, 2021

SPECIAL MEETING OF THE LICENSING COMMITTEE

HELD IN THE COUNCIL CHAMBER AND
REMOTELY VIA MICROSOFT TEAMS

Members present: Alderman Rodgers (Deputy Chairperson, in the Chair);
Aldermen McCoubrey and Sandford; and
Councillors Bradley, Bunting, T. Kelly, Magee, McAteer,
McCabe, McCullough, McKeown and Mulholland.

In attendance: Ms. N. Largey, Divisional Solicitor;
Mr J. Hanna, Senior Democratic Services Officer.

Apologies

Apologies for inability to attend were reported from the Chairperson, Councillor Donnelly, and Councillors Howard, Hutchinson, M. Kelly and Smyth.

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)

Application for a New Licence to Operate a House of Multiple Occupation - 8 Jerusalem Street

The Committee considered the following report, which provided an update on the application and a copy of the report which had been deferred at the meeting of the Committee on 20th October:

“1.0 Purpose of Report or Summary of main Issues

- 1.1 To update Committee following its decision to defer consideration of the above application to allow time to consider representations which were received by the applicant’s solicitor on 20th October 2021.**
- 1.2 As consideration of the application was deferred it was necessary apply for an extension of time within which to determine the application. This was because time within which the application was to be determined expired on 29th October 2021.**

1.3 An application to extend time was made at Belfast Magistrates Court on 27th October 2021. The applicant objected to the application. However, that application was refused as the Council had previously been granted an extension of time and felt that the ample time had been provided to the Council to determine the application.

1.4 Given the issues involved in this application relate to fitness and overprovision it was considered necessary to convene a special meeting of the Licensing Committee to determine the application rather than simply allow a deemed licence to be issued.

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:

- (i) Grant the application, with or without any special conditions; or
- (ii) Refuse the application.

2.2 If the application is refused, the Applicants have a right of appeal to the County Court. Such an appeal must be lodged within 28 days of formal notification of the decision.

2.3 Objectors have no right of appeal but may be able to judicially review the Council's decision

3.0 Main report

Key Issues

3.1 Members will recall that this application was before Committee on 20th October 2021. A copy of the Case Officer Report is attached at Appendix 1.

3.2 As appears from that report, this is a new application although the property has operated as a HMO previously under the old NIHE Registration Scheme and also has the benefit of a CLEUD which was granted last year (LA07/2020/1277/LDE).

3.3 The issue in short is that from information submitted in support of the application for a CLEUD, it would appear that the property was let as a HMO from 7th October 2018 (when the previous registration expired) until 31st March 2019, without registering it with NIHE as an HMO, in accordance with the Statutory Registration Scheme for Houses in Multiple Occupation in Northern Ireland.

- 3.4 Furthermore, the documentation submitted with the CLEUD application would appear to suggest that the property was let as an unlicensed HMO from the 1 April 2019 to the 31 August 2020 contrary to section 7(1) of the 2016 Act, which is an offence under the 2016 Act.
- 3.5 The Council were granted an order at Belfast Magistrates' Court on 27th July 2021 to extend the time afforded to it, to determine the Applicants' licence application. The Application was made on the basis that the Council required time to write to the Applicant seeking its comments on the evidence that was provided in support of their application for a CLEUD and the implication that the subject premises had been operating as an unlicensed HMO for a significant period of time.
- 3.6 Unfortunately, due to an administrative oversight, officers overlooked writing to the Applicant in this regard and a Notice of Proposed Decision to refuse the application on the grounds of overprovision and fitness was only issued on 6th October 2021.
- 3.7 The Applicant was afforded 14 days within which to respond and a response was duly received on 20th October 2021, the day of Committee, at approximately 2.30pm. These representations were circulated to Committee but upon Officer advice it was considered inappropriate to proceed without having properly considered the representations and being able to formally report back to Committee in respect of same. For those reasons the application was deferred.
- 3.8 As the period within which the application could be determined was due to expire on 29th October 2021, an application to extend time was made to the Magistrates Court and was listed for hearing on 27th October 2021. The Applicant objected to the application and ultimately the Court refused the application to extend time.
- 3.9 Whilst the Court accepted that both parties had acted in good faith it was of the view that the Applicant was prejudiced by the Council's failure to determine the application and furthermore that it would be unfair to further delay the application until an appeal was heard given the ample time the council had to deal with the application. This was despite the Council's representation that the issues of fitness and overprovision were matters of general public importance which should properly be dealt with by the Committee rather than by default.

- 3.10 Initially, officers were of a view that it would not be possible to determine the application before 29th October 2021 due to the recent developments in relation to call-in and the proposed amendments to Standing Orders which are due to be ratified on Monday 1st November 2021.
- 3.11 However, upon reviewing the matter, Officers are of the view that the extant Standing Orders are applicable until such times as they are amended and given the particular circumstances in relation to this application and the legal duties placed upon the Council by the 2016 Act, that call-in should be suspended in relation to this application in any event.
- 3.12 A copy of the Applicant's representations dated 20th October 2021 are attached to their report at Appendix 2 and the Officer response to that correspondence is attached at Appendix 3.

Financial and Resource Implications

- 3.13 None.

Equality and Good Relations Implications

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

Appendix 1

Report of 20th October, 2021

"1.0 Purpose of Report/Summary of Main Issues

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
8 Jerusalem Street Belfast BT7 1QN	8360	TJHFT Limited and DMHFT Limited	CPS Property

- 1.2 Members are reminded that licences are issued for a 5-year period with standard conditions. Where it is considered necessary to do so, the Committee can also impose special conditions.

Background

- 1.3 The property had the benefit of an HMO registration granted by the Northern Ireland Housing Executive ('NIHE') which expired on 7th October 2018 for 4 persons.
- 1.4 On 22nd March 2021, an HMO licence application was received from the owners of the accommodation. The NIHMO Unit searched the database of licenced HMOs and found that the property was not licenced as an HMO with the council. Officer's also searched the NIHE historical database which indicated the registration was not renewed after the expiry date of the 7 October 2018.
- 1.5 Following the publication of this application, an objection was received in relation to the application. This objection raises concerns about the overprovision of HMOs in the locality
- 1.6 As a valid objection has been received, the application must be considered by the Committee which must, after hearing from the objector and the applicant, decide whether to grant the application.

2.0 Recommendations

- 2.1 Taking into account the information presented Committee is asked to hear from the Applicants and make a decision to either:
 - (i) Grant the application, with or without any special conditions; or
 - (ii) Refuse the application.
- 2.2 If the application is refused, the applicants have a right of appeal to the County Court. Such an appeal must be lodged within 28 days of formal notification of the decision.
- 2.3 Objectors have no right of appeal but may be able to judicially review the Council's decision

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.

Planning

- 3.2 As this is a new application, the NIHMO Unit consulted with the Council's Planning Service which, on 26th March 2021 confirmed that a Certificate of Lawful Existing Use or Development ('CLEUD') was granted with the planning reference LA07/2020/1277/LDE.

Fitness

- 3.3 When considering the fitness of an applicant, the Council must have regard to specified offences and any other matter it considers to be relevant.
- 3.4 The NIHMO Unit has consulted with the following units within the Council's City and Neighbourhood Services Department:
- (a) Environmental Protection Unit ('EPU') - has 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') - 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) 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) Enforcement Unit ('EU') - 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,

- 3.5 The applicants and managing agent have confirmed that they have not been convicted of any relevant offences.
- 3.6 The applicant or managing agent have not been convicted of any HMO related offences by the Council. The EPU, PHHU and EU, solely in respect of their statutory functions, have confirmed that there are no relevant, previous convictions in respect of the applicant, managing agent or occupants. Due to data protection issues which have recently arisen, the PSNI has not been accepting or responding to notification of these applications. Officers are continuing to engage with the PSNI to find a resolution to this issue.
- 3.7 From information submitted to the Council's Planning Service, in support of the Applicant's application for a CLEUD, it would appear that the property was let as an HMO from 7th October 2018 (when the previous registration expired) to 31st March 2019, without registering it with NIHE as an HMO, in accordance with the Statutory Registration Scheme for Houses in Multiple Occupation in Northern Ireland.
- 3.8 Furthermore, the documentation submitted with the CLEUD application would appear to suggest that the property was let as an unlicensed HMO from 1st April 2019 to 31st August 2020, contrary to section 7(1) of the 2016 Act, which is an offence under the 2016 Act.
- 3.9 The Council was granted an order at Belfast Magistrates' Court on 27th July 2021 to extend the time afforded to it, to determine the applicants' licence application. The application was made on the basis that the Council required time to write to the applicants seeking its comments on the evidence that was provided in support of their application for a CLEUD and the implication that the subject premises had been operating as an unlicensed HMO for a significant period of time; this being a relevant consideration for officers in determining whether the Applicants are fit and proper persons.
- 3.10 Unfortunately, due to an administrative oversight, officers overlooked writing to the applicants in this regard and, in error, issued a Notice of Proposed Decision to refuse the

application on the grounds of overprovision only, on 5th October 2021.

- 3.11 A further Notice of Proposed Decision was issued on 6th October 2021 confirming that the Council proposed to refuse the Applicants' licence application on overprovision and on the basis that it could not be satisfied that the applicants were fit and proper persons.
- 3.12 Officers would ask Members to note that the applicants are afforded a 14-day period in which to make representations in response to the Notice of Proposed Decision.
- 3.13 Members are also asked to note that NIHE inspection records refer to an arranged inspection of the property on 3rd December 2018, at which time the property was occupied by 2 persons and, as such, did not appear to be in HMO usage. Furthermore, the Managing Agent confirmed that the property was vacant when inspected by the NIHMO Unit on 7th April 2021, In addition, it was confirmed that 2 tenants took up residence on 10th April 2021 and a copy of the new tenancy agreement was provided to the NIHMO Unit.
- 3.14 Officers are not aware of any other issues relevant to the applicant's fitness.

Overprovision

- 3.15 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.
- 3.16 The Legal Services Unit 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.
- 3.17 On the date of assessment, 14 September 2021 there were a total of 1081 licensed HMOs in HMO policy area 'HMO 2/22 Botanic, Holylands and Rugby' which equates to 45% of the total dwelling units, which in turn exceeds the 30% development limit as set out at Policy HMO 1. The 1081 licensed HMOs have a capacity of 4948 persons.

- 3.18 The total number of dwelling units in a Policy Area is measured by Ordnance Survey's Pointer database.
- 3.19 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.
- 3.20 The Council recognises that there is a need for intensive forms of housing and to meet this demand, Houses in Multiple Occupation (HMOs) are an important component of this housing provision. HMOs, alongside other accommodation options within the private rented sector, play an important role in meeting the housing needs of people who are single, who have temporary employment, students, low income households and, more recently, migrant workers.
- 3.21 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.'
- 3.22 On 6th October 2021, there were no licensed HMOs advertised for let on the website Property News in BT7, it was identified on the same website that there was 1 licensed HMO properties advertised for let in BT9 with a capacity of 3 bed spaces.
- 3.23 Members will be aware from BBC press reports that 'Queen's offers students £1,500 not to take up university accommodation'. The university said 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 they have no accommodation across their 3 sites Great Patrick Street, John Bell House and Swanston Houses and are now operating a waiting list. Botanic Studios confirmed they are also completely full and have a waiting list. LIV Student Belfast indicate on their website that they are sold out.
- 3.24 Anecdotal evidence from conversations with HMO managing agents suggest that that there is currently a lack of HMO accommodation available in the locality. It is too early to tell whether this is a temporary problem or evidence of an emerging long-term supply issue.

- 3.25 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.
- 3.26 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.

Objections

- 3.27 Following publication of notice of the application, an objection was received in relation to the application. A copy of that objection is attached at Appendix 3. The objection appears to be on the basis of over provision.

Attendance

- 3.28 The applicant and/or their representatives will be available to discuss any matters relating to the licence application should they arise during your meeting. The objector will also be in attendance if the Committee wishes to hear from him.

Suitability of the Premises

- 3.29 An inspection of the premises was carried out by an officer from the NIHMO Unit on 7th April 2021, at which time it was established that the property meets the physical standards for an HMO.

Notice of Proposed Decision

- 3.30 On 6th October 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. (see Appendix 4)
- 3.31 The Notice of Proposed Decision stated that the Council proposed to refuse the licence as The Council is not satisfied that:

- (a) the granting of the licence will not result in overprovision of HMOs in the locality in which the living accommodation is situated.
- (b) the owner of the living accommodation is a fit and proper person for the purposes of granting a licence pursuant to section 8 of the Houses in Multiple Occupation Act (Northern Ireland) 2016.

3.32 A statement of reasons for the proposal was included in the Notice of Proposed Decision.

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

(a) Overprovision

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.

For the purpose of section 12(2) of the 2016 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')

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

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.

On the date of assessment, 14 September 2021 there were a total of 1081 licensed HMOs in HMO policy area 'HMO 2/22 Botanic, Holylands and Rugby' which equates to 45% of the total dwelling units, which in turn exceeds the 30% development limit as set out at Policy HMO 1. The 1081 licensed HMOs have a capacity of 4948 persons.

The total number of dwelling units in a Policy Area is measured by Ordnance Survey's Pointer database.

On the 06 October 2021 there were no licensed HMOs advertised for let on the website Property News in BT7, it was identified on the same website that there was 1 licensed HMO properties advertised for let in BT9 with a capacity of 3 bed spaces.

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.

Officers cannot be satisfied that the granting of the HMO licence will not result in overprovision of HMO accommodation in the locality of the accommodation for the purpose of section 8(2)(d) of the 2016 Act.

(b) Fit and proper person

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.

The property had the benefit of an HMO registration, with a permitted occupancy of 4 persons, granted by the Northern Ireland Housing Executive ('NIHE') which expired on the 7 October 2018.

As this is a new application, the HMO Unit consulted with the Council's Planning Service who on the 26 March 2021 confirmed that a Certificate of Lawful Use or Development was granted with the planning reference LA07/2020/1277/LDE

To obtain a CLEUD in this regard, an applicant is required to demonstrate to the particular Council's satisfaction that use of the respective property as an HMO began more than 5 years from the date of the CLEUD application and that the use was continuous.

The evidence submitted with the CLEUD application included the following

- 12 months signed tenancy agreement commencing 1 September 2014 (4 tenants)
- 12 months signed tenancy agreement commencing 1 September 2015 (4 tenants)
- 12 months signed tenancy agreement commencing 1 September 2016 (4 tenants)
- 12 months signed tenancy agreement commencing 1 September 2017 (4 tenants)
- 12 months signed tenancy agreement commencing 1 September 2018 (4 tenants)
- 12 months signed tenancy agreement commencing 1 September 2019 (4 tenants)
- An HMO Registration Certificate issued 7 October 2013
- A rates bill dated 16 April 2019

From the information submitted with the CLEUD application, it would appear that the property was let as an HMO from 7th October 2018 (when the previous registration expired) to 31st March 2019 without registering it with NIHE as an HMO, in accordance with the Statutory Registration Scheme for Houses in Multiple Occupation in Northern Ireland.

Furthermore, based on the documentation submitted with the CLEUD application, it would appear that the property was let as an unlicensed HMO from the 1 April 2019 to the 31 August 2020 contrary to section 7(1) of the 2016 Act.

As a result, officers are satisfied that such matters are relevant in deciding whether the applicants, in their capacity as the owners of the HMO, are fit and proper persons.

Therefore, officers cannot be satisfied that the owners are fit and proper person, in accordance with section 8(2)(b) and section 10(4)(d) of the 2016 Act.'

Financial and Resource Implications

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

Equality and Good Relations Implications

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

The Divisional Solicitor reviewed the report, the officers’ response to the representations received on behalf of the applicant and the rationale for the Committee having to hold a meeting at late notice. She referred to the recent decision of the Strategic Policy and Resources Committee in relation to call-in, where it had been agreed to amend Standing Order 48 (2) (c) limiting the ability to suspend call-in to those cases in which an inability to immediately implement a decision would result in a breach of statutory or contractual duty or would otherwise prevent the Council from responding to a situation of emergency, as defined in the Civil Contingencies Act 2004. She advised that this application would fall into that category.

The Committee was informed that Mr. MacDermott, the applicant’s legal representative, was in attendance and he was welcomed by the Deputy Chairperson.

Mr. MacDermott reviewed the court history of the application. He then reviewed the application, which in his opinion should be treated as a renewal application due to the administrative errors, which the Council had characterised as a breakdown in communication and the application having fallen through the cracks. This was one of a number of similar occasions which had arisen in March/April 2019 throughout the handover between the NIHE and the Council, during which everyone was finding their feet and it had been difficult to get applications through.

He again made the point that this application should be treated as a renewal as the property had been operating as an HMO since 2013 and should be treated the same as approximately thirty other cases at the end of the previous year, during which the Council had agreed that, due to administrative difficulties arising from the handover, licences should be granted.

He then outlined the history of the application and the issues relating to the payment of the registration fee and the applicant’s belief that the application had been processed by the Council.

It then appeared that the applicant’s registration had lapsed, which he had been unaware of and he had acted in good faith at all material times. The applicant’s genuine belief that the property was registered was confirmed by the fact that he applied for a CLEUD from the Council, in effect bringing the fact that the property was operating as an HMO to Council officers’ attention. Again, no issues had been raised by the Council at that time.

It was only when the applicant’s managing agent had been unable to locate the property on the register and had contacted the HMO office and was advised that the application had been ‘missed’ in the changeover period between the NIHE and the Council that the applicant was aware that there was an issue. He was then advised to

make an application to renew the licence. Mr MacDermott reiterated that, due to the change in administration and the confusion that had arisen at that time, this should be treated as a renewal application. The property had been an HMO since 2013, there had been no complaints about it and, as a renewal, overprovision should not apply. If the Council was not happy with that, then it should look at need in the area.

He then addressed the issue of a fit and proper person, by again referring to the issue of the registration fee and the problems which had arisen at that time and indicated that this should not be taken into account as it was an administrative error. In addition, the applicant had fourteen other properties in operation as HMOs, none of which had raised any concerns. Therefore, for those reasons the application should be granted.

After discussion, it was

Moved by Councillor McAteer,
Seconded by Councillor McKeown and

Resolved - That the Committee agrees to reject the application for the grant of an HMO licence in respect of number 8 Jerusalem 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.

Chairperson