

Licensing Committee

Wednesday, 15th June, 2022

MEETING OF THE LICENSING COMMITTEE HELD REMOTELY VIA MICROSOFT TEAMS

Members present: Councillor McCullough (Deputy Chairperson in the Chair); Aldermen McCoubrey and Sandford; and Councillors Bradley, Canavan, Gormley, Howard, Hutchinson, M. Kelly, T. Kelly, Magee, McAteer, McCann, McCusker, McKeown, Murray, Nelson and Smyth.

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

Apologies

An apology for inability to attend was reported for Councillor Matt Collins (Chairperson).

Declarations of Interest

Councillor McCullough declared an interest in respect of Late Item: Application for the Grant of a 7-day annual Outdoor Entertainments Licence for Grove Park.

Councillor Gormley declared an interest in respect of items under the headings “Application for a New Licence to operate a House of Multiple Occupation for Flat 1, 3 Ireton Street” and, “Application for a New Licence to operate a House of Multiple Occupation for Flat 2, 3 Ireton Street”, in that he had made representations previously, in another application, on behalf of the applicant.

Councillor Murray declared an interest in respect of the item under the heading “Application for a New Licence to operate a House of Multiple Occupation for 20 Stranmillis Gardens”, in that, the Applicant was the landlord of his office.

Delegated Matters

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

Licences Issued Under Delegated Authority

The Committee noted a list of applications for licences and Road Closure Orders which had, since its last meeting, been approved under the Council’s Scheme of Delegation.

**Objections received to an application for the Renewal
of a 14-Day Occasional Outdoor Entertainments Licence –
Boucher Road Playing Fields**

The Building Control Manager informed the Committee that the application had been received on 10th August, 2021 and that, subsequently, an objection had been received outside the 28-day statutory period on 29th September, 2022.

He pointed out that the Committee had agreed, at its meeting on 16th March, to consider the objection that had been received outside the statutory period.

He reported that the objection had been submitted as a result of noise nuisance which had arisen from a number of concerts which had taken place in Boucher Road Playing Fields, in September, 2021.

He informed the Committee that the objector had contacted the Night Time Noise Team on 24th September, complaining of noise disturbance from the AVA concert at Boucher Road Playing Fields and that officers from the team had called to the complainant's premises at 22.05hrs and witnessed audible music from the direction of Boucher Road and had taken an indicative noise measurement which had shown an Leq of 47Db(A), which had been well within the agreed guidelines.

He added that the complainant had also complained about a sound test which had taken place on 28th October, 2021 and a sound test for the Ed Sheeran concert which had taken place on 12th May, 2022. Indicative readings had been taken in the Malone Road area during the Ed Sheeran event which had also been within the agreed guidelines.

He reported that, further to the objection, both the objector and the licensee had been invited to attend a liaison meeting to discuss the issues and ascertain if any measures could be implemented to alleviate the objector's concerns, however, the objector advised that he did not wish to attend the meeting.

The Building Control Manager outlined the special conditions which were attached to the licence, the measures taken to ensure health, safety and welfare, and stated that, both the PSNI and NIFRS had been contacted and confirmed that they had no objection to the application.

He explained to the Committee that promoters of large outdoor events must submit a Noise Management Plan to the Environmental Protection Unit for evaluation in advance of an event taking place and that Council officers worked with promoters in order to assess the noise that might be generated and to minimise the potential for noise disturbance.

He informed the Committee that the Applicant was present at the meeting to answer any questions and that the Objector had been invited to the meeting, however, was unable to attend due to illness and that the Committee could, if they so wished, defer the matter to a future meeting.

After consideration, the Committee agreed to approve the application for the renewal of a 14-Day Occasional Outdoor Entertainments Licence.

Applications for the Variation of a 7-Day Annual Indoor Entertainments Licence for The Dirty Onion, 42 Waring Street.

The Building Control Manager reported that an application had been received for the variation of a 7-Day Annual Indoor Entertainments licence for the hours at which entertainment might be provided at the Dirty Onion, based on the Council's Standard Conditions to provide music, singing, dancing or any other entertainment of a like kind.

He explained that the days and hours during which entertainment might be provided under the terms of the licence were:

- Monday to Saturday: 11.30am to 1.00am the following morning, and
- Sunday: 12.30pm to 12.00midnight.

He pointed out that the days and hours which entertainment was being proposed to be provided, as a variation of the licence, were:

- Monday to Sunday: 11.30am to 3.00am the following morning.

The Building Control Manager informed the Committee that the applicant had stated that the proposed extension of hours to 3.00am had been in an effort to fulfil the customer demand for a late-night music venue and would operate in conjunction with an Article 44a extension to Liquor Licensing hours.

He highlighted that no representations had been received in response to a public notice of the application and that both the PSNI and NIFRS had no objections to the application. He added that an inspection had been carried out on the premises regarding health, safety and welfare and that Council officers had been satisfied with all safety measures and management procedures. There had been no noise complaints received in relation to the premises in the previous 12-month period.

The Committee agreed to approve the application for the variation of a 7-Day Annual Indoor Entertainments Licence to provide entertainment to 3.00am.

Application to provide outdoor musical entertainment beyond 11.00 pm at Falls Park

The Building Control Manager informed the Committee that the organisers of Féile an Phobail had submitted a request to hold a festival event within Falls Park from Saturday 6th August, to Sunday 14th August, 2022, and to permit the planned entertainment to run beyond 11.00pm on up to four occasions.

He reported that a 7-Day Annual Outdoor Entertainments Licence and a 7-Day Annual Indoor Licence for a Marquee has been granted for Falls Park and that both had been used to hold events in the past. He added that the Licences were held by the City and Neighbourhood Services Department and had been transferred to the organisers for the duration of their event.

He stated that the days and hours during which entertainment might be provided both outdoors and, in a marquee, were Monday to Sunday from 11.30 am to 11.00 pm.

He highlighted that the event had been running for over 30 years as a community festival and had grown from a two to three day festival to a 10-11 day festival, which offered a mix of arts and cultural events, including concerts, comedy, tours and walks, and that, in recent years, the event organisers had consolidated the entertainment events at Falls Park to three to four evenings, which had been motivated by a desire to minimise disruption to the local community.

He pointed out that the event organiser had engaged with an independent acoustic consultant to develop a noise mitigation strategy and that, once received by the Service, the strategy would be provided to Environmental Protection Unit (EPU) for appraisal.

He stated that the EPU had received a total of 13 noise complaints with regard to the festival in 2021, and that the majority of issues raised had been related to the volume of music and the finishing time of the dance event which had taken place on 8th August, 2021. He added that the aforementioned complaints had been brought to the attention of the event organisers following the conclusion of the 2021 festival and would be highlighted to their acoustic consultant in preparation for this year's festival. No formal action had been undertaken by the EPU in respect of those noise complaints received.

The Building Control Manager outlined the measures which would be taken to ensure health, safety and welfare and stated that the PSNI had been contacted in relation to the event, but had not yet confirmed if they had any objection to the application.

The Committee agreed to approve the application to provide musical entertainment beyond 11.00pm to 1.00am on four occasions, at Falls Park, subject to no objection having been received from the PSNI.

**Applications for the Variation of a 7-Day Annual
Indoor Entertainments Licence for The Merchant Hotel,
16 Skipper Street**

The Building Control Manager reported that an application had been received for the variation of a 7-Day Annual Indoor Entertainments licence for the hours at which entertainment might be provided at the Merchant Hotel, based on the Council's Standard Conditions to provide music, singing, dancing or any other entertainment of a like kind.

He explained that the days and hours during which entertainment might be provided under the terms of the licence were:

- Monday to Saturday: 11.30am to 1.00am the following morning, and
- Sunday: 12.30pm to 12.00midnight.

He added that, in addition to the above standard operating hours, entertainment might be provided in Ollie's Nightclub to 3.00am seven days a week and the USC First Floor Rear Bar to 3.00am on Friday and Saturday nights.

He pointed out that the days and hours which entertainment was being proposed to be provided, as a variation of the licence, were:

- Monday to Sunday: 11.30am to 3.00am the following morning.

The Building Control Manager informed the Committee that the applicant had stated that the proposed extension of hours to 3.00am had been in an effort to fulfil the customer demand for a late-night music venue and would operate in conjunction with an Article 44a extension to Liquor Licensing hours.

He highlighted that no representations had been received in response to a public notice of the application and that both the PSNI and NIFRS had no objections to the application. He added that an inspection had been carried out on the premises, regarding health, safety and welfare and that Council officers had been satisfied with all safety measures and management procedures. There had been no noise complaints received in relation to the premises in the previous 12-month period.

The Committee agreed to approve the application for the variation of a 7-Day Annual Indoor Entertainments Licence to provide entertainment to 3.00am.

**Houses in Multiple Occupation (HMO) Licences
Issued Under Delegated Authority**

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

The Committee dealt with the following two items together as they were from one applicant for multiple licences contained within one property, however consideration was given to each application separately

(Councillor Gormley, who had declared an interest in the following two items, left the meeting while they were under consideration)

Flats 1 and 2, 3 Ireton Street

The HMO Unit Manager reported that applications had been received for a new licence to operate a House of Multiple Occupation (HMO), in respect of two units, flats 1 and 2, at 3 Ireton Street. He stated that the properties had previously held HMO licences, granted by the Northern Ireland Housing Executive, but that the licences had expired on 28th February 2022.

He pointed out that the Applicant had applied to renew his licences on 23rd February, 2021, however, he had contacted the NIHMO Unit on 26th March, 2021, to withdraw his applications, citing that it had been due to a recent outcome with a separate HMO application.

He informed the Committee that the two properties each had a Certificate of Lawful Existing Use or Development and that officers were not aware of any issues in relation to the fitness of the Applicant or his Managing Agent.

He outlined the assessment which had taken place on 12th May, 2022, in order to determine the provision and availability of HMO accommodation in the HMO Policy Area, and he stated that Legal Services had advised that there was a clear requirement, in Section 8 of the Houses in Multiple Occupation (Northern Ireland) Act 2016, for the Council to be satisfied that the granting of a licence would not result in overprovision.

He reported that there had been no objections received in relation to the applications and that technical officers from the NIHMO Service had inspected the properties and that the accommodations had been certified as complying with the physical standards for an HMO on 16th April, 2022.

The HMO Unit Manager pointed out that a notice of proposed decision had been issued to the Applicant, for each of the two applications, on 17th May, 2022. He stated that, with regard both applications, the notices of proposed decision advised the Applicant that the Council intended to refuse the applications, as it could not be satisfied that the granting of the licences would not result in overprovision in the locality.

The Chairperson welcomed the Applicant's solicitor, Ms. M. O'Neill to the meeting. Ms. O'Neill explained that the decision to refuse the applications on the basis of overprovision had been flawed and was an error of law. She stressed the need for accommodation in the area and referred to a rental housing crisis. She highlighted that the Council had indicated that it recognised that there was a need for housing accommodation in the locality, but had still indicated its intention was to refuse the applications.

The Chairperson thanked Ms. O'Neill for her submissions on behalf of the Applicant.

**Application for a New Licence to operate a House of
Multiple Occupation for Flat 1, 3 Ireton Street**

The Committee agreed to refuse the application, on the basis that granting the licence would result in overprovision.

**Application for a New Licence to operate a House of
Multiple Occupation for Flat 2, 3 Ireton Street**

The Committee agreed to refuse the application, on the basis that granting the licence would result in overprovision.

(Councillor Gormley returned to the meeting)

**Application for a New Licence to operate a House of
Multiple Occupation for 20 Stranmillis Gardens**

(Councillor Murray, who had declared an interest in this item,
left the meeting while it was under consideration)

The HMO Unit Manager informed the Committee that an application had been received for a new Licence to operate a House of Multiple Occupation (HMO) for 20 Stranmillis Gardens.

He reported that the property had previously had the benefit of an HMO Licence, in the name of the previous owner, granted on 9th September, 2020 and that the property had been purchased by the existing owner on 29th March, 2021.

He informed the Committee that the Applicant and Managing Agent had confirmed that they had not been convicted of any relevant offences and that there had been no relevant enforcement action taken with regard to day or night-time noise, rubbish accumulation, litter or waste.

He outlined the assessment which had taken place on 12th May, 2022 in order to determine the provision and availability of HMO accommodation in the HMO Policy Area and he stated that Legal Services had advised that there was a clear requirement, in Section 8 of the Houses in Multiple Occupation (Northern Ireland) Act 2016, for the Council to be satisfied that the granting of a licence would not result in overprovision.

He reported that there had been no objections received in relation to the application and that the accommodation had been certified, as having been compliant with the physical standards required for an HMO, by a technical officer from the NIHMO Service on 27th April, 2022.

He pointed out that a notice of proposed decision had been issued on 6th May, advising the Applicant that the Council intended to refuse the application as it could not be satisfied that the granting of the licence would not result in overprovision in the locality.

The HMO Unit Manager referred to correspondence from the Applicant's solicitor, which stated that the property had been previously registered as an HMO and was recorded in the 2015 subject plan and, therefore, had been taken into account at the time the subject plan was drawn up as an existing HMO in the area and that the Council should bear in mind the need for housing accommodation in the locality.

He drew the Committee's attention to officers' comments in response to the solicitor's correspondence, which stated that officers believed that the argument that it had been previously registered as a HMO was misconceived and that it did not have the benefit of a valid HMO licence.

He further stated that officers had accepted that there was high demand for HMO accommodation in the area but that had to be balanced against the Council's

obligation to be satisfied that the grant of the licence would not result in the overprovision of HMO accommodation in a particular area.

The Chairperson welcomed Mr. P. MacDermott, Solicitor acting on behalf of the Applicant, to the meeting.

Mr. MacDermott explained that the property had been an HMO property since 2014, when it had been purchased by the Applicant's mother and had been operated lawfully while under her ownership. He stated that she had renewed the HMO registration in December, 2020 for period of five years.

He informed the Committee that, in 2021, the Applicant's mother decided to transfer her investment property into the ownership of her son, the Applicant, whereby the Applicant had emailed the NIHMO Unit to advise them that the property had changed ownership and they had been advised that the date of transfer had ceased the effect of the current licence and the Council was treating the application as an application for a new licence.

He stated that he believed the use of the 2015 subject plan had been unlawful, in that the plan had been drafted for different purposes. He further stated that assessments undertaken would not necessarily be accurate and that there was a major need for accommodation of this type within the locality.

He explained that, the area was one that demanded affordable accommodation for young adults, students and young professionals and failure to grant licences would further contribute to a housing crisis, and that granting of the licence would not result in overprovision.

Proposal

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

That the Committee agrees to refuse the application, on the basis that granting the licence would result in overprovision.

On a recorded vote, fourteen Members voted for the proposal and one against and it was declared carried.

<u>For 14</u>	<u>Against 1</u>
Councillor McCullough (Chairperson); and Alderman Sandford; and Councillors Bradley, Canavan, Gormley, Howard, M. Kelly, T. Kelly, Magee, McAteer, McCann, McKeown, Nelson and Smyth.	Councillor Hutchinson.

(Councillor Murray returned to the meeting)

**Application for a New Licence to operate a House of
Multiple Occupation for 19 Sandymount Street**

The HMO Unit Manager informed the Committee that an application had been received for a new Licence to operate a House of Multiple Occupation (HMO) for 19 Sandymount Street.

He reported that the property had previously had the benefit of an HMO Licence, in the name of the previous owner, granted on 9th September, 2020 and that the property had been purchased by the existing owner on 25th June, 2019. On 26th September, 2019, an authorised officer from the NIHMO Unit had inspected the property following the service of a Section 78 Notice: Powers of entry without warrant of the 2016 Act, which had resulted in enforcement action.

He advised the Committee that an HMO licence application had been received from the owner of the accommodation on 26th September, 2019, which had been subsequently rejected by the NIHMO Unit on 4th October, 2019, on the grounds that granting the application of the new licence would constitute a breach of planning control. The applicant had submitted an application for a Temporary Exemption Notice on 9th October, which had been granted until 17th January, 2020.

He informed the Committee that both the Applicant and Managing Agent had confirmed that they had not been convicted of any relevant offences and that there had been no relevant enforcement action taken with regard to day-time or night-time noise or rubbish accumulation. However, there had been was one incident which had resulted in the service of an Article 21 notice in accordance with The Waste and Contaminated Land (Northern Ireland) Order 1997 in February 2018, that required the occupier to place the waste for collection in receptacles of a kind and number specified.

He outlined the assessment which had taken place on 12th May, 2022 in order to determine the provision and availability of HMO accommodation in the HMO Policy Area, and he stated that Legal Services had advised that there was a clear requirement, in Section 8 of the Houses in Multiple Occupation (Northern Ireland) Act 2016, for the Council to be satisfied that the granting of a licence would not result in overprovision.

He reported that there had been no objections received in relation to the application and that the accommodation had been certified, as having been compliant with the physical standards required for an HMO, by a technical officer from the NIHMO Service on 27th April, 2022.

He pointed out that, a notice of proposed decision had been issued on 1st June, advising the Applicant that the Council intended to refuse the application as it could not be satisfied that the granting of the licence would not result in overprovision in the locality.

The Chairperson welcomed Mr. P. MacDermott, the Applicant's solicitor, to the meeting.

Mr. MacDermott stated that the purpose of the HMO legislation was to grant the Committee the powers to decide whether a HMO licence should be granted and was not a mathematical exercise to ascertain overprovision. He referred to comments made earlier in the meeting, by a Member of the Committee, whereby if the Committee were to embark on a blanket ban of all new HMO licence applications presented, it would be unlawful and that the Committee had a duty and responsibility to consider each and every application on its own merits.

He explained to the Committee that, due to personal circumstances, the Applicant had to move to another area to care for his father and was unable to make the application. He added that there was no provision within the locality for HMO accommodation and that the Committee must consider the need within the area. He asked for the Committee to consider the fact that the property had been operating as an HMO since 1988.

The Divisional Solicitor responded to Mr. MacDermott's comments by stating that the Council did not operate a blanket ban on applications and was obliged to have regard to the relevant legislation which required the Committee, when assessing overprovision, to have due regard to the number of licenced HMO accommodations in the area. She added that the Committee did take into account representations and material considerations which had been made in support of applications and that it was a matter for the Committee to decide what weight to attach to those considerations.

The Committee agreed to refuse the application, on the basis that granting the licence would result in overprovision.

**Application for a New Licence to operate a House of
Multiple Occupation for 31 Melrose Street**

The HMO Unit Manager informed the Committee that an application had been received for a new Licence to operate a House of Multiple Occupation (HMO) for 31 Melrose Street.

He reported that the property had previously had the benefit of an HMO Licence, in the name of Mr. Patrick McNabb, with an expiry date of 19th June, 2022. He informed the Committee that Mr. McNabb had died on 2nd June, 2021 and that the property had been jointly owned by Mr. McNabb and his wife, the current licence applicant, since March 2006.

He informed the Committee that both the Applicant and Managing Agent had confirmed that they had not been convicted of any relevant offences and that there had been no relevant enforcement action taken with regard to day or night-time noise, rubbish accumulation, litter or waste.

He outlined the assessment which had taken place on 12th May, 2022 in order to determine the provision and availability of HMO accommodation in the HMO Policy Area and he stated that Legal Services had advised that there was a clear requirement, in Section 8 of the Houses in Multiple Occupation (Northern Ireland) Act 2016, for the Council to be satisfied that the granting of a licence would not result in overprovision.

He reported that there had been no objections received in relation to the application and that the accommodation had been certified, as having been compliant with the physical standards required for an HMO, by a technical officer from the NIHMO Service on 27th April, 2022.

The HMO Unit Manager outlined Section 29 of the 2016 Act which provided the transfer of the licence of a deceased sole licence-holder to that person's executor and that the licence would expire three months after the date of death, unless the Council was satisfied that it was reasonable to extend it in order to wind up the holder's estate. He added that the restricting factor in Section 29 of the Act was the requirement for the Council to be notified of the death of the sole licence-holder and that Counsel's advice had been sought and obtained on the issue, whereby Legal Services had confirmed that there might be some scope to grant an extension to the three-month period which had been triggered by the death of an owner.

He pointed out that a notice of proposed decision had been issued on 18th May, advising the Applicant that the Council intended to refuse the application as it could not be satisfied that the granting of the licence would not result in overprovision in the locality.

He referred to correspondence which had been received on behalf of the Applicant, from her Managing Agent, in response to the proposed decision, which had cited the sudden death of her husband, trying to get his affairs in order, and not having been aware of the legislative requirements and pointed to the significant investment that she and her late husband had made to bring the property up to HMO standards and that it had operated as a HMO with no issues.

He reminded the Committee that it had discretion to be flexible in relation to the mandatory time limit within which the death of a licence holder must be notified to the Council and might decide that it would be reasonable to extend that period, in which case the licence would remain extant and the issue of overprovision could not be taken into account.

The Committee agreed to grant the application, by extending the period within which the owner was required to notify the Council of a change of ownership, on the basis of unique and tragic circumstances of the applicant.

Late Item

Application for the Grant of a 7-day annual Outdoor Entertainments Licence for Grove Park

(Councillor McCullough (Chairperson), had declared an interest in this item, and left the meeting for the duration)

(Councillor Smyth in the Chair)

The Building Control Manager reported that an application had been received for the grant of a 7-day annual Outdoor Entertainments Licence in respect of Grove Park, Jellicoe Avenue from the City and Neighbourhood Services Department.

He explained that, the Council, at its meeting in January, had agreed to deliver as a £500,000 diversionary and festival programme on the understanding that, as part of the programme, there would be events taking place on Council-owned land that would be required to be organised within a short timeframe. He added that the Strategic Policy and Resources Committee, at its meeting on 13th May, had awarded the Hubb Community Resource Centre funding to run the Dockside Festival from 4th to 11th July and this application related to that event.

He pointed out that, as with all licences of this nature, the applicant was the Director of Neighbourhood Services and that the standard days and hours for an Outdoor Entertainments Licence were Monday to Sunday, 11.30am to 11.00pm.

He advised the Committee that both the PSNI and NIDRS would be consulted in relation to the application and that officers from the Health, Safety and Welfare Service would engage with the applicant and event organisers in the lead-up to the event, in order to ensure that all documentation and technical information was in place. He added that officers would inspect the site during the build of the event space, and following its completion, to ensure that all safety and management procedures were in place.

The Committee agreed to grant delegated authority to the Chief Executive to approve the application for the Grant of a 7-day annual Outdoor Entertainments Licence for Grove Park for the events on 8th to 10th July only, subject to having been satisfied that, all safety and management procedures were in place and consultation had been undertaken with the PSNI and NIFRS.

Chairperson