

Licensing Committee

Wednesday, 17th August, 2022

MEETING OF THE LICENSING COMMITTEE HELD REMOTELY VIA MICROSOFT TEAMS

Members present: Councillor Matt Collins (Chairperson);
Alderman Sandford; and
Councillors Bradley, Canavan, Gormley,
Hutchinson, M. Kelly, T. Kelly, Magee,
McAteer, McCann, McCusker, McCullough,
McKeown, Murray, Smyth and Thompson.

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

Apologies

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

Minutes

The minutes of the meeting of 30th May and 15th June were taken as read and signed as correct. It was reported that those minutes had been adopted by the Council at its meeting on 4th July, subject to the omission of those matters in respect of which the Council had delegated its powers to the Committee.

Declarations of Interest

Councillor McKeown declared an interest in agenda item 2 (b), The Marcus Ward Outdoor Entertainment Licence Provisional Grant, in that he had previously assisted the applicants in a planning capacity, and he took no part in the discussion.

Councillor Murray declared in relation to agenda item 2 (g), application for a new licence to operate a House of Multiple Occupation for 34 Sandhurst Garden, in that his employer had previously rented a property from the applicant's agent and that he had previously declared an interest in applicants in which that agent was involved. As that tenancy had subsequently ended, he did not consider that he was still required to declare an interest.

The Democratic Services Officer, Mrs Steele, declared an interest in item 2 (e), 73-75 North Street – Amusement Permit Provisional Grant, in that she was related to one of the applicants and left the meeting whilst the matter was being discussed.

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.

**The Marcus Ward Outdoor Entertainment
Licence Provisional Grant**

The Director of Planning and Building Control informed the Committee that an application had been received for the provisional grant of a 7-Day Entertainments licence, to provide outdoor musical entertainment at The Marcus Ward, 1 Bankmore Square, Belfast, a newly formed outdoor events space located on the current hardstanding area on the corner of Bankmore Square and Dublin Road where the Movie House Cinema had been demolished. The applicant proposed to provide an area for the consumption of food and alcohol which would include the provision of live music.

She advised that the maximum numbers within the event space would be agreed by the Building Control Service and might vary depending on individual concert set-up proposals.

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

- Monday to Sunday: 11.30 a.m. to 11.00 p.m. and
- Sunday 12.30 p.m. – 11.00 p.m.

She advised that in response to a public notice of the application, one objection had been received from a local resident on 9th May 2022, however, following a liaison meeting with both parties the objector had agreed to withdraw the objection. Both the PSNI and NIFRS had been contacted and confirmed that they had no objection to the application.

She added that the applicant had been asked to provide an acoustic report for the outdoor area for evaluation and any necessary acoustic measures would be required to be implemented, along with any fire safety, structural or access requirements upon completion of works, before the grant of the licence could be confirmed.

She informed the Committee that the Applicant was present at the meeting to answer any questions.

The Committee agreed to approve the application for the provisional grant of a 7-Day Annual Outdoor Entertainments Licence and to delegate authority to the Director of Planning and Building Control to issue on completion of all technical requirements.

**Boucher Road Playing Fields Outdoor
Entertainment Licence Grant**

The Director of Planning and Building Control reminded the Committee that, at its meeting held on, 15th June, following consideration of an objection to the application for the 14-day Occasional Outdoor Entertainments Licence for Boucher Road Playing Fields, the Committee had agreed to renew the licence. She reported that, subsequently, an application had been received for the grant of a 7-Day Annual Outdoor Entertainments Licence to permit the use of this large event space for more than 14 days per year.

She advised the Committee that a 7-day Annual Entertainment Licence had previously been in place for Boucher Road Playing Fields until 2014. Currently, Belfast City Council held both a 14-Day Occasional Outdoor Entertainments Licence and a 14-Day Occasional Indoor Entertainments Licence for a marquee in respect of Boucher Road Playing Fields. Boucher Road had been used as a venue to provide large outdoor concerts for approximately 10 years.

She advised that the current days and hours during which entertainment could be provided for both Occasional Licences were:

- Monday to Saturday: 11.30 a.m. to 11.00 p.m. and
- Sunday: 12.30 p.m. to 11.00 p.m.

The Director outlined the special conditions which were attached to the licence, along with the measures taken to ensure health, safety and welfare. She pointed out 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.

She advised the Members that pre-event planning meetings would be held with all relevant services, agencies and promoters for all large outdoor music events within the Boucher Road Playing Fields. These meetings would be attended by officers of the Council, Police Service of Northern Ireland, Northern Ireland Fire and Rescue Service, Department of Infrastructure, Translink, Northern Ireland Ambulance Service, promoters and their relevant service providers. In addition, officers from the Council would assess the Event Planning documents submitted by the promoter and carry out site inspections prior to and throughout the events to ensure compliance with relevant guidance in relation to fire safety, structures, access, egress and facilities for all.

The Director 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.

The Committee was also asked to recognise that noise generated by large scale outdoor concerts was likely to lead to some level of disturbance for local residents. Even if guideline levels were met, there was no guarantee that complaints would not be received. Conversely, if a recommended level was exceeded this might not necessarily lead to complaints as people might be prepared to tolerate the event because it would only last for a limited period. She also asked the Members to note that historically these

events did cause some anti-social behaviour on the routes of travel to and from the venue.

She informed the Committee that the applicant was present at the meeting to answer any questions.

A Member referred to the fact that she had been contacted by several residents from Lislea Avenue, Lisburn Road in relation to incidents of antisocial behaviour following the Ed Sheeran Concert and she sought an assurance that further liaison would take place with the relevant stakeholders to try and resolve these issues prior to upcoming events scheduled for the end of August. She highlighted that, whilst Lislea Avenue was some distance from the Boucher Playing Fields, there was a bridge from the Avenue that accessed the Boucher Road.

The Neighbourhood Services Manager, representing the Council as the applicant, addressed the Committee and provided an assurance that further liaison was currently being arranged. She advised that residents of Lislea Avenue would be invited to a site visit prior to the upcoming Emerge Music Festival Event at the end of August, along with other stakeholders. In addition to this, she reported that the event promoter had secured additional security personnel for the upcoming Festival who would be located at the bridge to try and mitigate the previous issues. She further advised that staff from the Community Safety Team and Community Feet on the Street would be present at previously identified 'hot spots' to try and ensure the safety and welfare of vulnerable people attending the events.

The Committee agreed to approve the application for the grant of a 7-Day Annual Outdoor Entertainments, subject to the following special conditions being attached to the licence:

1. Maximum numbers to be agreed at the discretion of the Building Control Service, it was noted that these would vary depending upon the individual concert set up proposals;
2. Prior to any event taking place, the promoters would be required to demonstrate evidence of early consultation and have in place a robust system of dealing with any complaints, to be agreed in advance with the Council;
3. Any requests to provide entertainment later than 11.00 p.m. must be considered by the Licensing Committee and therefore must be made at least 3 months in advance of the proposed event; and
4. Should an application to provide entertainment beyond 11.00 p.m. be granted and the Council subsequently receive a significant number of complaints regarding noise, or the complaint was of such significant impact, authority be granted to the Director of Planning and Building Control, in consultation with the City Solicitor, to reduce the finishing time for any subsequent nights of the event, in which case the promoter would be required to make contingency arrangements.

**163 Stranmillis Road – Amusement
Permit Provisional Grant**

The Director of Planning and Building Control reported that an application had been received from Little Vegas (NI) Limited for the provisional grant of an Amusement Permit.

She advised the Members that, at a meeting of the Licensing Committee held on 26 June 2013, the Committee had agreed to refuse the granting of an amusement permit to Little Vegas (NI) Ltd. for the ground and first floors of 163 Stranmillis Road. Subsequently, at a meeting on 21st August 2013, following the hearing of representations, it had agreed to grant an amusement permit for the ground floor of the premises only. An amusement permit had been held for the ground floor of 163 Stranmillis Road since October 2013 and the premises had operated as a gaming centre ever since.

The Director advised that the applicant company, which was the current amusement permit holder, now wished to also use the first floor of the premises which they had rented since 2013, as part of the amusement arcade, to develop the business and aid its recovery after the pandemic.

She reported that there was no mechanism within the Order to enable the variation of a permit, such as for the increase in the floor area being used for the amusement arcade, therefore, an application was required for the Provisional Grant or Grant of an Amusement Permit.

The application was for a total of 50 gaming machines, giving an increase of 25 machines over the existing arcade; all of which were to pay out a maximum all cash prize of £25.00. Admission to the arcade would be restricted to persons aged 18 or over.

The proposed opening hours of the premises, as specified on the application, were:

- Monday to Sunday: 10.00 a.m. to 10.00 p.m.

The current normal opening hours were indicated on the premises as being Monday – Saturday 11 a.m. – late and Sunday 1 p.m. to late, however, currently the amusement arcade was open on a trial basis from 3.00 p.m. – 3.00 a.m. (as indicated at the entrance and on the premises website).

She advised 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.

The Director advised that the Building Control Service had received 3 complaints concerning the premises, one in each of 2014, 2017 and 2018 and confirmed that each complaint had been resolved to the Service's satisfaction

The Environmental Protection Unit / Night-time Noise Team had received 4 noise complaints, three in 2018 and one in 2019.

The Committee was advised that Planning permission for change of use of ground and first floor to an amusement arcade had been granted on the 8th July 2012. As the amusement arcade had been open since 2013, they would have established use rights to operate as an amusement arcade under Planning Legislation.

She reminded the Members that in an important Court of Appeal decision in June 1999, it had been confirmed that the Council, in determining applications for Amusement Permits, may take into account planning considerations but should be slow to differ from the views of the Planning Authority. The Court had also confirmed that the Council could consider matters such as location, structure, character and impact on neighbours and the surrounding area.

The Director outlined the evaluation of the application against the criteria contained within the Council's Amusement Permit Policy and stated that, whilst the location of the permit application satisfied most criteria in the Amusement Permit Policy, it was not considered to meet criteria (dii). She explained that this criterion related to the proximity of proposed premises immediately adjacent to residential use. Having regard to the potential impact on residential amenity, the Permit Policy advises a precautionary approach by discouraging the opening of amusement arcades in such locations.

She advised that, should the Committee be minded to refuse the application for the Provisional Grant of the Permit, or to grant the Permit, subject to any discretionary conditions, that it would be required to advise the applicant of its intentions to do so and to afford the applicant the opportunity to make representation at a specified Licensing Committee meeting on the matter before making a final decision. She further reported that if, upon hearing the applicant, the Committee should refuse the application for the Provisional Grant of an Amusement Permit or decide to grant the application subject to discretionary conditions, the applicant could within 21 days from the date on which notice of the decision was served on him, appeal to the county court.

The Director, with the aid of a Power point presentation, provided an overview of the proposed location for the premises and demonstrated its proximity to residential property, highlighting that the proposed first floor location was immediately adjacent to No. 161a Stranmillis Road which was a 4-bed apartment currently licenced as an HMO that appeared to be occupied.

The Chairperson informed the Committee that the both the applicant and his architect were present at the meeting to answer any questions.

The Applicant, Mr. Conor Forbes, thanked the Members for the opportunity to address the Committee. He provided a brief overview of his business and alluded to the pressures that his business had faced during the Covid-19 pandemic, along with the rising energy and running costs that all businesses were now facing. He explained that he was currently paying rent and rates on three floors of this property and was keen to expand the business onto the second floor to develop the business and to help aid its recovery after the pandemic. He advised that the proposal was for an additional 25 gaming machines over the existing arcade (50 in total), with a maximum pay out of £25.00 to be accessed by persons aged 18 or over.

The applicant's architect then addressed the Committee and provided an assurance that, if the Committee approved the application, sound proofing of the premises would be undertaken.

Following a query from a Member regarding the proposed opening times, the Applicant confirmed that it was proposed that the opening times for the first floor would be Monday to Sunday 10.00 a.m. – 10.00 p.m. The opening times of the ground floor business would remain unchanged (currently, Monday to Sunday 3.00 p.m. – 3.00 a.m.)

The Committee agreed that it was minded to refuse the application on the basis that it did not comply with the criterion of the Council's Amusement Permit Policy, in that the first floor of the proposed premises was immediately adjacent to residential use property.

73-75 North Street – Amusement Permit Provisional Grant

(The Democratic Services Officer, who had declared an interest in this item, left the meeting while it was under consideration)

The Director of Planning and Building Control reported that an application had been received from Oasis Retail Services Limited for the provisional grant of an Amusement Permit at 73-75 North Street. The Committee was advised that the application related to the relocation of an existing amusement arcade at 19 North Street, the necessity for which was linked to a wider regeneration initiative for the north-eastern part of the City Centre. The Director advised that the grant of planning permission for the amusement arcade at No.73-75 North Street (Ref: LA04/2018/0098/F) had been subject to a legal agreement whereby the existing amusement arcade at 19 North Street would close once the proposed arcade would become operational.

The Members were advised that the proposed replacement arcade would consist of 85 gaming machines, which would represent a decrease of 15 machines from the existing arcade's 100 machines. All would pay out a maximum all cash prize of £25.00 and admission would be restricted to persons aged 18 or over.

The proposed opening hours of the premises, as specified on the application, were:

Monday to Sunday: 9.00 a.m. to 12.00 midnight

The Director pointed out 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.

The Director outlined the evaluation of the application against the criteria contained within the Council's Amusement Permit Policy. She referred to the application premises being in the Retail Core of Belfast City Centre and the fact that the Amusement Permit Policy had a presumption against permitting amusement centres to open in the Retail Core. However, she advised that the Permit Policy did state that an exception could be made for applications which were for renewals or part of a major, retail-led mixed-use development. She continued that, this application sought to relocate an existing amusement arcade 150m closer to Royal Avenue, the relocation of

which would help facilitate the assembly of property for the regeneration of the north-eastern quarter of the City Centre.

The Director advised the Members that the requirement to relocate the amusement centre to facilitate regeneration, and the requirement of the planning permission to close the existing amusement arcade at 19 North Street once this proposed arcade became operational, were factors that the Licensing Committee might wish to consider in the determination of this permit application.

She advised that, should the Committee be minded to refuse the application for the Provisional Grant of the Permit, or to grant the Permit, subject to any discretionary conditions, that it would be required to advise the applicant of its intentions to do so and to afford the applicant the opportunity to make representation at a specified Licensing Committee meeting on the matter before making a final decision. She further reported that if, upon hearing the applicant, the Committee should refuse the application for the Provisional Grant of an Amusement Permit or decide to grant the application subject to discretionary conditions, the applicant could within 21 days from the date on which notice of the decision was served on him, appeal to the county court.

The Director, with the aid of a Power point presentation, provided an overview of the proposed location for the new premises and its location in relation the two listed buildings.

The Chairperson welcomed Mr. M. Trimble, Applicant, and Ms. D. Thompson, Planning Consultant, to address the Committee. They briefly outlined the need for the relocation of the premises to facilitate redevelopment and regeneration of the existing premises at 19 North Street and reiterated that the existing premises would close once the new arcade opened.

The Committee agreed to approve the application for the Provisional Grant of an Amusement Permit at 73-75 North Street and to delegate authority to the Director of Planning and Building Control to issue on completion of all technical requirements.

(The Democratic Services Officer returned to the meeting)

Houses in Multiple Occupation (HMO)
Licenses 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.

Application for a New Licence to operate a House
of Multiple Occupation for 34 Sandhurst Gardens,
Belfast, BT9 5AW

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

“1.0 Purpose of Report or Summary of main Issues

- 1.1 To consider an application for a Licence permitting the use of premises as a House in Multiple Occupation (HMO).

Premises	Application No.	Applicant(s)	Managing Agents
34 Sandhurst Gardens, Belfast, BT9 5AW	9262	Mr Daniel Brennan and Mr Patrick Quinn	Giant Property Limited

- 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.

2.0 Recommendation

- 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.

Notice of proposed decision

- 2.2 On the 15 June 2022, pursuant to Paragraph 9 of Schedule 2 of the Houses in Multiple Occupation Act (Northern Ireland) 2016 (“the 2016 Act”), Officers issued a Notice of Proposed Decision. Appendix 2
- 2.3 The Notice of Proposed Decision stated that the council proposed to refuse the licence on the grounds of overprovision. A statement of reasons for the proposal was included in the Notice of Proposed Decision.
- 2.4 If the application is refused, the Applicants have a right of appeal to the County Court. An appeal must be lodged within 28 days of formal notification of the Council’s decision.

3.0 Main report

Background

- 3.1 The property had the benefit of a deemed HMO licence in the name of the existing owner which expired on the 09 February 2022. A deemed licence occurs if the Council does not determine an application within 3 months of a valid application

being received and the applicant is to be treated as having been granted a licence which is valid for one year in the terms applied for. In the case of this deemed licence, officers were unable to complete the application due to the temporary suspension of HMO inspections and subsequent administrative delays related to the Covid pandemic.

- 3.2 On the 27 July 2021, 10 December 2021 and the 12 January 2022 reminder letters were sent to Mr. Daniel Brennan informing him of the need to apply to renew the licence.
- 3.3 On the 2 March 2022 an application for a Temporary Exemption Notice “TEN” was received. The application was subsequently refused on the 9 March 2022 as the steps specified in the application were not sufficient to secure that the property ceased to be an HMO.
- 3.4 On the 11 March 2022 a further TEN application was received and granted on the 18 March 2022.
- 3.5 On the 09 May 2022 an HMO licence application was received from the owners of the accommodation.

Key Issues

- 3.6 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

- 3.7 As this is a new application the Council’s Planning Service was consulted. It confirmed that a Certificate of Lawfulness of Existing Use or Development (“CLEUD”) was granted with the planning reference LA04/2019/2417/LDE.

As this is a new application the Council's Planning Service was consulted. It confirmed that a Certificate of Lawfulness of Existing Use or Development ("CLEUD") was granted with the planning reference LA04/2019/2417/LDE.

Fitness

- 3.8 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.
- 3.9 The NIHMO Unit has consulted with the following units within the Council's City and Neighbourhood Services Department –
- (i) Environmental Protection Unit ("EPU") - who have confirmed that in relation to night-time noise there has been no relevant enforcement action required in respect of the HMO in the last 5 years;
 - (ii) Environmental Protection Unit ("EPU") - who have confirmed that in relation to day-time noise there has been no relevant enforcement action required in respect of the HMO in the last 5 years;
 - (iii) Public Health and Housing Unit ("PHHU") - who have confirmed that in relation to rubbish accumulation/filthy premises, there has been no relevant enforcement action required in respect of the HMO in the last 5 years and;
 - (iv) Enforcement Unit ("EU") - who have confirmed that in relation to litter and waste, there was a fixed penalty notice issued in November 2020.
- 3.10 The Applicants and Managing Agent have confirmed that they have not been convicted of any relevant offences as set out at paragraph 3.3 of this report.
- 3.11 The Applicants 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 Applicants, 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.

- 3.12 Officers are not aware of any other issues relevant to the Applicants' fitness.

Overprovision

- 3.13 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 2/19 Stranmillis" as defined in the document "Houses in Multiple Occupation (HMOs) Subject Plan for Belfast City Council Area 2015.
- 3.14 Legal Services has advised that there is a clear requirement in section 8 of the 2016 Act upon the Council to be satisfied that the granting of a licence will not result in overprovision.
- 3.15 On the date of assessment, 13 June 2022 there were a total of 342 licensed HMOs in HMO policy area "HMO 2/19 Stranmillis" which equates to just over 45% of the total dwelling units, which in turn exceeds the 30% development limit as set out at Policy HMO 1. The 342 licensed HMOs have a capacity of 1467 persons.
- 3.16 The total number of dwelling units in a Policy Area is measured by Ordnance Survey's Pointer database.
- 3.17 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.

The Council recognises that there is a need for intensive forms of housing and to meet this demand, 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.

- 3.18 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."

- 3.19 On the 15 June 2022, 9 licensed HMOs were advertised as for rent on the website PropertyNews.com in BT9, of those which represented 34 bedspaces. Of those 2 were within HMO policy area "HMO 2/19 Stranmillis". From the information provided on the website this represented 8 bed spaces within the policy area. Availability was immediate through to the end of September 2022.
- 3.20 A further examination of the PropertyNew.com website took place on the 12 August 2022 at which time 10 licensed HMO were advertised in BT9 representing 41 bedspaces, 2 of which were in HMO policy area "HMO 2/19 Stranmillis" comprising 8 bedspaces.
- 3.21 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.
- 3.22 The fact that 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.
- 3.23 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

- 3.24 No objections have been received in relation to this application.

Attendance

- 3.25 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

- 3.26 The accommodation was certified as complying with the physical standards for an HMO for 3 persons (2 other rooms are below the minimum bedroom size of 6.5m²) by a technical officer from the NIHMO service, on the 28 February 2022.

The previous deemed licence had a permitted occupancy of 5 persons.

Response from the Applicants to the notice of proposed decision

3.27 At the time of writing this report the licence applicants had not submitted a response to the notice of proposed decision.

3.28 Financial and Resource Implications

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

Equality and Good Relations Implications

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

The Chairperson welcomed Mr. C. Dolan, Managing Agent acting on behalf of the Applicant, to the meeting.

Mr. Dolan explained that he managed a number of HMO properties predominately around the University area of South Belfast and he went onto emphasise the current demand that existed for HMO properties in the University area, not only from students, but young professions, migrant workers, asylum seekers, contractors working in the city and the NIHE for use as emergency accommodation. He reported that, often once HMO properties were advertised, they had to be removed from his company’s website due to the overwhelming level of interest that the advertisement created. He went on to state that the removal of HMO status on properties was only limiting the number of bedrooms that were being used as the properties were still being let but fewer people were residing in them, for example, to young professionals who were using only two of the bedrooms in a property.

He also stated that neither applicants nor agents had received training on the new HMO regulations, whilst Elected Members had been trained, and he felt that this approach was unfair.

In conclusion, he appealed the Members for a common-sense approach as the property in question had been an HMO for over 10 years. He explained that it had been given a deemed licence which was only valid for one year, unfortunately the applicant, an elderly gentleman, did not understand the process and the HMO had subsequently expired.

Following a question from a Member asking if Mr. Dolan tried to let properties to families rather than students, he advised that many of the HMO properties were unsuitable for family use as they had no baths and very small bedrooms, he added that families very rarely wished to live in these areas.

A Member highlighted that the applicant had been sent three reminder letters informing him of the need to apply to renew the licence.

Proposal

Moved by Councillor McCann,
Seconded by Councillor Smyth,

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

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

<u>For 15</u>	<u>Against 2</u>
Councillor Matt Collins (Chairperson); and Alderman Sandford; and Councillors Canavan, Gormley, M. Kelly, T. Kelly, Magee, McAteer, McCann, McCullough, McCusker, McKeown, Murray, Smyth and Thompson.	Councillors Bradley and Hutchinson.

Application for a New Licence to operate a House of Multiple Occupation for 38 Wolseley Street, Belfast, BT7 1LG

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

“1.0 Purpose of Report or Summary of main Issues

1.1 To consider an application for a Licence permitting the use of premises as a House in Multiple Occupation (HMO).

Premises	Application No.	Applicant(s)	Managing Agents
38 Wolseley Street, Belfast, BT7 1LG	9156	Mr Gareth Macklin & Ms Cara Macklin	None

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.

2.0 Recommendation

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.

Notice of proposed decision

- 2.2 On the 27 June 2022, pursuant to Paragraph 9 of Schedule 2 of the Houses in Multiple Occupation Act (Northern Ireland) 2016 (“the 2016 Act”), officers issued a Notice of Proposed Decision to the Applicants. *Appendix 3*
- 2.3 The Notice of Proposed Decision stated that the council proposed to refuse the licence on the grounds of overprovision. A statement of reasons for the proposal was included in the Notice of Proposed Decision.
- 2.4 If the application is refused, the Applicants have a right of appeal to the County Court. An appeal must be lodged within 28 days of formal notification of the Council’s decision.

3.0 **Main Report**

Background

- 3.1 The property had the benefit of an HMO licence in the name of the existing owner which expired on the 04 May 2021.
- 3.2 On the 07 April 2021 a reminder letter was sent to Mr. Gareth Macklin informing him of the need to apply to renew the licence.
- 3.3 On the 09 March 2022 an HMO licence application was received from the Mr. Gareth Macklin, Ms. Cara Macklin was later added as a proposed joint licensee.
- 3.4 An application for a temporary exemption notice was received on the 06 April 2022 which was granted until 12 July 2022 and further extended until 29 September 2022.

Key Issues

- 3.5 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

- 3.6 As this is a new application the Council's Planning Service was consulted. It confirmed that a Certificate of Lawful Existing Use or Development ("CLEUD") was granted with the planning reference LA04/2022/0120/LDE.

Fitness

- 3.7 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.
- 3.8 The NIHMO Unit has consulted with the following units within the Council's City and Neighbourhood Services Department –
- a) Environmental Protection Unit ("EPU") - who have confirmed that in relation to night-time noise there has been no relevant enforcement action required in respect of the HMO in the last 5 years;
 - b) Environmental Protection Unit ("EPU") - who have confirmed that in relation to day-time noise there has been no relevant enforcement action required in respect of the HMO in the last 5 years;
 - c) Public Health and Housing Unit ("PHHU") - who have confirmed that in relation to rubbish accumulation/filthy premises, there has been no relevant enforcement action required in respect of the HMO in the last 5 years and;
 - d) Enforcement Unit ("EU") - who have confirmed that in relation to litter and waste, there was a fixed penalty notice issued in Jan 2022.

- 3.9 The Applicants have confirmed that they have not been convicted of any relevant offences as set out at paragraph 3.3 of this report.
- 3.10 The Applicants has 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 Applicants, 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.
- 3.11 Officers are not aware of any other issues relevant to the Applicant's fitness.

Overprovision

- 3.12 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, Rugby" as defined in the document "Houses in Multiple Occupation (HMOs) Subject Plan for Belfast City Council Area 2015.
- 3.13 Legal Services have 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.
- 3.14 On the date of assessment, 13 June 2022 there were a total of 1107 licensed HMOs in HMO policy area "HMO 2/22 Botanic, Holylands, Rugby". This equates to between 45% and 46% of the total dwelling units of 2409 within the policy area. Which in turn exceeds the 30% development limit as set out at Policy HMO 1. The 1107 licensed HMOs have a capacity of 5020 persons.
- 3.15 The total number of dwelling units in a Policy Area is measured by Ordnance Survey's Pointer database.
- 3.16 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.
- 3.17 On the 24 June 2022, 10 licensed HMOs were advertised as for rent on the website PropertyNews.com in BT7, of those which represented 48 bedspaces. Of those 7 were within HMO policy area "HMO 2/22 Botanic, Holylands and Rugby". From the

information provided on the website this represented 34 bed spaces within the policy area. Availability was immediate through to the end of September 2022.

- 3.18 A further examination of the PropertyNew.com website took place on the 15 August 2022 at which time 4 licensed HMO were advertised in BT7 representing 20 bedspaces, 2 of which were in HMO policy area “HMO 2/22 Botanic, Holylands and Rugby” comprising 10 bedspaces.
- 3.19 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.
- 3.20 The fact that 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.
- 3.21 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

- 3.22 No objections have been received in relation to this application.

Attendance

- 3.23 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

- 3.24 The accommodation was inspected on the 13 April 2022 and several defects were notified to the applicant; those works remain outstanding. If the licence is granted members are asked to permitted officers to include the completion of the works as a condition of the licence. *Appendix 4*

**Response from the Applicants to the
Notice of Proposed Decision**

- 3.25 On the 26 July 2022, representations were received from O'Hare Solicitors on behalf of the Applicants Appendix 5. The Applicants contend that the basis for the proposed refusal of the application is flawed as the decision fails to reflect the central fact that the relevant property operated as an HMO before 2003 and up to 2021 without issue.
- 3.26 The applicant advised that when he was drafting a renewal application in May 2021, he was under the misconception that a CLEUD was required in order to complete the renewal process.
- 3.27 The representations argue that section 8(2)(d) of the 2016 Act is not intended to have effect on areas where there is already overprovision, and where the property has been operating as an HMO previously and go on to state that the granting of this application cannot logically be deemed to "result" in overprovision in the area in the circumstances.
- 3.28 The representations also highlight that the applicant is aware from conversations with his agent that, at present, there is no availability of HMO properties in this area due to demand.
- 3.29 Issue is also taken with the Council's adoption of the 2015 Subject Plan for the purpose of the Council's assessment of overprovision.
- 3.30 Additional representations were received on the 3 August 2022 which relate to the extenuating circumstances relating to the Applicants' core business at Appendix 6

Officers' comments further to the applicant's response

- 3.31 In relation to the comment from the applicants' solicitor that his client was under the misconception that the CLEUD must be in place before the application for renewal of the licence could be lodged I would refer members to the Council's Licensing Committee meetings in December 2020 and January 2021, where members took an agreed approach in relation to a very limited number of HMOs where an owner had not applied to renew their licence on time because of a generally held misconception that Planning Permission or a Certificate of Lawfulness of Existing Use or Development ("CLEUD") was needed before they could do so.
- 3.32 In light of this, members agreed that all new applications due to expire before 1st March 2021, where the premises have previously operated as an HMO and had the benefit of planning

permission and/or a CLEUD, would not be considered to result in overprovision:-

- 3.33 This application was received on the 09 March 2022 which is over a year after the cut-off date of the 1 March 2021, therefore the application could not have been considered in accordance with members agreed decision.
- 3.34 The Council has no record of a draft application to renew the licence in May 2021. In response to the representation that the applicant believed it was necessary to submit plans and evidence of a CLEUD, the online application form makes it clear that “In relation to renewal applications (to be treated as a renewal the application must be made before the expiry of the previous licence) the issue of planning control is excluded from the application process.
- 3.35 Additionally, the guidance notes outlined at the commencement of the application form contain a mandatory requirement for the applicants to confirm that they have read and approved the guidance notes which provide “Pursuant to Section 20(4)(a) a breach of planning control cannot be taken into consideration when considering a renewal application”.
- 3.36 As the current application was received after the expiry of the previous licence, this application is a new licence application and, in accordance with section 8(2)(d) of the 2016 Act, the Council may grant the licence only if it is satisfied that the granting of the licence will not result in over provision of HMOs in the locality in which the living accommodation is situated.
- 3.37 When considering overprovision, the council must have 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; and, (c) such other matters as the Department may by regulations specify.
- 3.38 Officers recognise that there is a high demand for HMO type accommodation in HMO policy area “HMO 2/22 Botanic, Holylands, Rugby” at this time. However, in Officers view, the evidence available does not demonstrate a clear need for HMO accommodation at this time. The Committee is entitled to adopt a precautionary approach as this is the only occasion in respect of which overprovision can be taken into account in an area where the level of HMO accommodation already exceeds the limit set out in the HMO Subject Plan by over 50%.

- 3.39** In relation to the criticism regarding reliance upon the HMO Subject Plan, the plan is a publicly available planning policy document which is used to assess planning applications for HMOs in Belfast. The overall aim of the Subject Plan is to provide a planning framework for HMO development in facilitating sustainable growth and encouraging balanced communities by promoting a mix of housing tenures and types and the creation of quality-built environments which contribute to the achievement of safe, complete and balanced communities for people to live in.
- 3.40** Officers are of the view that it is entirely reasonable and rationale to use this Plan as a basis for assessing overprovision. This allows for some level of certainty for property owners, prospective purchasers and the general public in relation to the acceptable level of HMO properties in a particular area. Regardless of the fact that the Council did not draft this document, it is a material consideration and one which the Council is entitled to have regard to. The weight to be attached to the HMO Subject Plan is a matter for the Committee having regard to all other material considerations.
- 3.41** Legal Services have confirmed that section 20(2) of the 2016 Act makes it clear that an application to renew a licence must be made before the licence ceases to have effect.
- 3.42** Therefore, members must consider the above provisions at 3.38 of this report, regarding overprovision, and cannot simply ignore same because of the representations made by the Applicant concerning his personal circumstances and reasons for failing to renew his previous licence on time.

Financial and Resource Implications

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

Equality and Good Relations Implications

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

The Chairperson welcomed Mr. G. Macklin, applicant, to the meeting.

Mr. Macklin commenced by advising that he did not dispute missing the filing date and for this he apologised. He advised that the property in question had operated without issue as an HMO for over 20 years, during this period standards had been met and he believed that they would have continued to be met if a renewal had been granted.

The representative then provided the Members with extensive detail regarding the extenuating circumstances that he had found himself in during the period when the error had occurred. He provided detail regarding his other business within the care sector and the pressures that those working in that industry had faced from the period March 2022, pressures which were still being felt today and he stated that without a doubt these had attributed to the renewal paperwork issued on 7th April being missed.

Following a query from a Member, the representative went into further detail regarding the pressures with the care home sector during this period, highlighting that his staff numbers had been depleted due to Covid 19. He emphasised that the focus of all his staff had been on ensuring the safe delivery of care to residents and their families.

The representative also referred to the fact that, when drafting the renewal application in May 2021, he had been under the misconception that a CLEUD needed to be in place before the application for renewal of the licence could be lodged and stated that this had also created an unnecessary delay as he had applied for this instead of progressing with the renewal.

The representative also detailed the significant level of demand for HMOs in the area and stated that the granting of the application would not result in over provision in the area as the property had been operating as an HMO previously.

The representative concluded by once again apologising for the error and he appealed to the Members to exercise discretion due to the various mitigating factors that had occurred.

In relation to the inference from the representative that it had been necessary to submit plans and evidence of a CLEUD, the HMO Unit Manager responded that the online application had made it clear that in relation to renewal applications the issue of planning control was excluded from the process. In addition, he highlighted that the application had been received on the 9th March, 2022 which had been over a year after the cut-off date of the 1st March 2021, therefore the application could not have been considered in the context of where a premises had previously operated as an HMO and had the benefit of planning permission and/or a CLEUD it would not be considered to result in overprovision.

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 118 University Avenue, Belfast, BT7 1GZ

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

1.0 Purpose of Report or Summary of main Issues

1.1 To consider an application for a Licence permitting the use of premises as a House in Multiple Occupation (HMO).

Premises	Application No.	Applicant(s)	Managing Agents
118 University Avenue, Belfast, BT7 1GZ	9272	Mr Ignatius McCluskey	M&M Property Services

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.

2.0 Recommendation

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.

Notice of proposed decision

2.2 On the 26 July 2022, 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. *Appendix 3*

2.3 The Notice of Proposed Decision stated that the Council proposed to refuse the licence on the grounds of overprovision. A statement of reasons for the proposal was included in the Notice of Proposed Decision.

2.4 If the application is refused, the Applicant has a right of appeal to the County Court. An appeal must be lodged within 28 days of formal notification of the Council's decision.

3.0 Main Report

Background

3.1 The property had the benefit of an HMO licence in the name of the existing owner which expired on the 03 April 2019.

3.2 On the 25 February 2021 an HMO licence application was received from Mr. Ignatius McCluskey which was subsequently rejected on the 2 March 2021 as the granting would constitute a breach of planning control

3.3 A further application was received on the 12 May 2022.

Key Issues

- 3.4 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

- 3.5 As this is a new application the Council's Planning Service was consulted. It confirmed that a Certificate of Lawfulness of Existing Use or Development ("CLEUD") was granted on the 28 April 2022 with the planning reference LA04/2021/0616/LDE.

Fitness

- 3.6 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.
- 3.7 The NIHMO Unit has consulted with the following units within the Council's City and Neighbourhood Services Department –
- (a) Environmental Protection Unit ("EPU") - who have confirmed that in relation to night-time noise there was a noise warning notice issued on 15 November 2017;
 - (b) Environmental Protection Unit ("EPU") - who have confirmed that in relation to day-time noise there has been no relevant enforcement action required in respect of the HMO in the last 5 years;

- (c) Public Health and Housing Unit (“PHHU”) - who have confirmed that in relation to rubbish accumulation/filthy premises, there has been no relevant enforcement action required in respect of the HMO in the last 5 years and;
 - (d) Enforcement Unit (“EU”) - who have confirmed that in relation to litter and waste there has been no relevant enforcement action required in respect of the HMO in the last 5 years;
- 3.8 The Applicant has confirmed that they have not been convicted of any relevant offences as set out at paragraph 3.6 of this report.
- 3.9 The Applicant has 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 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.
- 3.10 Officers are not aware of any other issues relevant to the Applicant’s fitness.

Overprovision

- 3.11 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, Rugby” as defined in the document “Houses in Multiple Occupation (HMOs) Subject Plan for Belfast City Council Area 2015.
- 3.12 Legal Services has advised that there is a clear requirement in section 8 of the 2016 Act upon the Council to be satisfied that the granting of a licence will not result in overprovision.
- 3.13 On the date of assessment, 22 July 2022 there were a total of 1105 licensed HMOs in HMO policy area “HMO 2/22 Botanic, Holylands, Rugby”. This equates to just under 46% of the total dwelling units of 2409 within the policy area. Which in turn exceeds the 30% development limit as set out at Policy HMO 1. The 1105 licensed HMOs have a capacity of 5008 occupants.

- 3.14 The total number of dwelling units in a Policy Area is measured by Ordnance Survey's Pointer database.
- 3.15 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.
- 3.16 The Council recognises that there is a need for intensive forms of housing and to meet this demand, 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.
- 3.17 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."
- 3.18 On the 27 July 2022, 5 licensed HMOs were advertised as for rent on the website PropertyNews.com in BT9, of those which represented 22 bedspaces. Of those 4 were within HMO policy area "HMO 2/22 Botanic, Holylands and Rugby". From the information provided on the website this represented 17 bed spaces within the policy area. Availability was from the end of August through to the start of September 2022
- 3.19 A further examination of the PropertyNews.com website took place on the 15 August 2022 at which time 4 licensed HMOs were advertised in BT7 representing 20 bedspaces, 2 of which were in HMO policy area "HMO 2/22 Botanic, Holylands and Rugby" comprising 10 bedspaces. Officers noted the subject premises was also listed for rent on the PropertyNew's website.
- 3.20 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.
- 3.21 The fact that 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.

- 3.22 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

- 3.23 No objections have been received in relation to this application.

Attendance

- 3.24 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

- 3.25 The accommodation was inspected on the 20 May 2022 and several defects were notified to the applicant; those works remain outstanding. If the licence is granted members are asked to permitted officers to include the completion of the works as a condition of the licence. *Appendix 4*

Response from the Managing Agent to the notice of proposed decision

- 3.26 On the 27 July 2022 representations were received from Mr Michael McMahon of M&M Property Services Appendix 5. The manager questions why the HMO unit advise the applicant to apply for a CLEUD to renew the “out of time” application.
- 3.27 The representation further question why a named premise was not refused on the same grounds.
- 3.28 On 12 August 2022, McCann & McCann Solicitors submitted a written response on behalf of the applicant to the Notice of Proposed Decision in which they provide representations and commentary on overprovision and the specifics of the application. *Appendix 6*
- 3.29 The representations state that there is ample evidence that there is a large demand for HMO properties in the locality and the Council should take into account the fact that there is a huge demand without the appropriate supply.

3.30 McCann & McCann Solicitors make the point that this application is one in which the Council can reach an exceptional decision on the following grounds:-

- A. The HMO Registration Certificate for this property expired on 3rd April 2019, and the applicant under the legislation that came into force on 1st April 2019 had to lodge his real application prior to that date. This was new practice from that which was in previous existence under the old HMO Legislation.**
- B. The applicant in this case held the misconception that Planning Permission was required for a renewal of a Licence. You will be aware that the Council was providing advice to renewals that they required Planning Permission until a threatened Judicial Review forced the Council to change their minds in September 2019.**
- C. On the date the registration ran out on the 3rd April 2019 was a time of flux, when Belfast City Council had just recently taken over the running of the HMO Unit from the NIHE.**
- D. The applicant lodged his application on 21st February 2021, after having obtained the CLEUD. He obtained this CLEUD as in the letter dated 2nd March 2021 Mr Bloomfield advised him that he required to have planning in place, and he therefore obtained this. This advice, which arguably was correct as of 2 March 2021, was clearly not correct as at 3rd April 2019.**
- E. The applicant's case should be considered under the number of cases which have colloquially referred to as those cases which fall within the "amnesty". This relates to a decision of the Licence Committee on 20th January 2021 that allowed any "out of time applications" to be renewed. The basis of these renewals was that there was a generally held misconception that planning was required before an application for renewal could be submitted. This case is on all fours with that amnesty in that it is a property that had the benefit of an HMO registration for many years, and had proper advice been given in April 2019 then the applicant would have renewed the application without having to obtain planning or consider overprovision.**

Officers' comments further to the applicant's response

- 3.31 There is no provision within the 2016 Act for an "out of time" application and as the current application was received after the expiry of the previous licence, this application is a new licence application and, in accordance with section 8(2)(d) of the 2016 Act, the Council may grant the licence only if it is satisfied that the granting of the licence will not result in an overprovision of HMOs in the locality in which the living accommodation is situated.
- 3.32 When considering overprovision, the Council must have 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; and, (c) such other matters as the Department may by regulations specify.
- 3.33 On receipt of the application for a new licence, submitted by Mr. Ignatius McCluskey, on the 25 February 2021, officers checked with the Council's planning service who on the 2 March 2021 confirmed that the premises did not have planning permission to operate as an HMO.
- 3.34 Officers wrote to the applicant on the 2 March 2021 pursuant to paragraphs 5 - 7 of schedule 2 of the 2016 Act refusing the application as the Council was not satisfied that the occupation of the living accommodation as an HMO would not constitute a breach of planning control (within the meaning given by section 131 of the Planning Act (Northern Ireland) 2011).Appendix 7
- 3.35 The representation further questioned why another named property was not refused on the same grounds as are proposed here. However, while officers are unable to discuss the details of the application referred to, it is clear that the particular circumstances of that application are not relevant here.
- 3.36 In relation to the submission from McCann & McCann Solicitors that this application is one that the Council can reach an exceptional decision officers note the 3 April 2019 date the previous registration expired on. However, a licence application was first presented on the 25 February 2021 (subsequently rejected on 2 March 2021 as there was no planning permission or a CLEUD in place) which is almost 2 years after the previous licence had expired.
- 3.37 When the previous licence expired on the 3 April 2019 the application form in existence at that time read "*In relation to*

renewal applications, failure to have planning permission for use of the property as an HMO will be considered when assessing whether the applicant is a fit and proper person. While this does not mean that an application will automatically be refused, applicants are advised to ensure they have the necessary permission or certificate of lawful use in place before applying for renewal of a licence”.

- 3.38 McCann & McCann Solicitor’s reference to an “Amnesty” relates to reports that came before members of the Council’s Licensing Committee for consideration in December 2020 and January 2021, where members took an agreed approach in relation to a very limited number of HMOs where an owner had not applied to renew their licence on time because of a generally held misconception that Planning Permission or a CLEUD was needed before they could do so.
- 3.39 In light of this, members agreed that all new applications due to expire before 1st March 2021, where the premises have previously operated as an HMO and had the benefit of planning permission and/or a CLEUD, would not be considered to result in overprovision. This specific application does not fall within the scope of the approach agreed by members as the property did not have planning permission or a CLEUD in place prior to the 1 March 2021. The CLEUD was applied for on 04 March 2021 and the decision to grant the CLEUD was taken by the Council’s Planning Service over a year later on the 28 April 2022 *Appendix 8*

Financial and Resource Implications

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

Equality and Good Relations Implications

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

The Chairperson welcomed Mr. P. MacDermott, the applicant’s solicitor, to the meeting.

Mr. MacDermott advised that he felt that this application differed to those that had been previously considered and, in this regard, he was seeking the Council to take an exceptional view.

He stated that the property had originally been purchased as an HMO by the applicant and had operated lawfully as such. The applicant had held an HMO registration certificate under the previous HMO legislation which had expired on 3rd April 2019, 3 days after the HMO Act had come into force. He referred to the transfer of the HMO scheme from the NIHE to the Council and stated that at this time there had been general confusion as to how the new scheme would be operated and

what information had been provided to the landlords. He stated that this was evidenced by the fact that the Council officials at that time were advising owners and landlords that on a renewal application the owner was told they had to have planning permission for the property, or they would be deemed not to be a fit person. He stated that, following the threat of judicial review proceedings being issued, 5 months after this initial direction, the Council had accepted that for renewal applications there was no need for planning permission as the property was an existing HMO. He advised that the Council now referred to this as a 'generally held misconception', and he reiterated that this was never the case.

The representative went on to detail that, in January 2021, the Council had acknowledged this mistake and had agreed that those applications lodged before 1st March 2021, for properties that had previously been HMO registered, would not fail to be granted due to overprovision. He advised that the renewal date on this application was 3rd April 2019, the renewal application had been lodged on 21st February 2021, within the grace period allowed by the Council. He stated that it was therefore entirely unfair to state that this case fell out of the grace period as the property did not have planning permission or a CLEUD in place. He stated that the only delay was the information being provided by the Council officials in 2019, and he sought the Council to use their discretion and to grant the licence.

He concluded his presentation by making comments regarding over provision generally. 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.

He appealed to the Council to exercise its discretion, considering the legislation, and to grant the licence as the only reason the application had not been renewed was because of a misdirection given by the Council regarding what was required in terms of renewal.

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

Chairperson