

Licensing Committee

Wednesday 20th November, 2018

MEETING OF LICENSING COMMITTEE

Members present: Councillor O'Hara (Chairperson);
Aldermen Copeland, Spence, L. Patterson; and
Councillors Boyle, Clarke, Craig, Dudgeon,
Groves, Hussey, Hutchinson, Magennis, and McConville,

In attendance: Mr. J. Walsh, City Solicitor;
Mr. A. Thatcher, Director of Planning and Building Control;
Mr. S. Hewitt, Building Control Manager;
Mr. J. Cunningham, Regulatory Services Manager;
Mr. H. Downey, Democratic Services Officer, and;
Miss C. Donnelly, Democratic Services Officer.

Apologies

Apologies for inability to attend were reported on behalf of the High Sheriff (Councillor Howard) and Councillor Nic Biorna.

Minutes

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

Declarations of Interest

Councillor Boyle declared an interest in relation to Item 2 (a) – Licensing of Houses of Multiple Occupation (HMO), in that he owned a number of HMO's within the City and left the meeting whilst the matter was under consideration.

Non-Delegated Matters

Licensing of Houses of Multiple Occupation – Role of the licensing Committee

(Mr. S. Leonard, Neighbourhood Services Manager, attended in connection with this item.)

The Committee considered the following report:

“1.0 Purpose of Report or Summary of main Issues

1.1 The Houses in Multiple Occupation (HMO) Act NI 2016 is due to commence on 1st April 2019. This will transfer the responsibility for the Houses in Multiple Occupation (‘HMO’) registration scheme from Northern Ireland House Executive to local district councils. It also creates a new licensing system, which requires landlords to demonstrate that they are a fit and proper person to be a HMO landlord.

1.2 The purpose of this report is to consider the role of the Licensing Committee in the decision-making process relating to the licensing of HMOs and to consider proposed amendments to Standing Orders and the Scheme of Delegation.

2.0 Recommendations

2.1 It is recommended, upon the advice of Legal Services, as follows :

- That the Licensing Committee assumes responsibility for determining all matters under the Houses in Multiple Occupation (HMO) Act NI 2016, with the exception of those which are proposed to be delegated to the Strategic Director of City and Neighbourhood Services;
- That the Strategic Policy and Resources Committee be recommended to amend Standing Order 37 (d) Duties of Committees – Licensing Committee to give effect to the Licensing Committee having delegated authority to determine those applications for a house in multiple occupation as set out in paragraph 3.6; and
- The Licensing Committee agrees to the amendments to the Scheme of Delegation, as outlined in paragraph 3.28; subject to the approval of the Strategic Policy and Resources Committee

3.0 Main report

Key Issues

3.1 The new legislative control, the Houses in Multiple Occupation (HMO) Act NI 2016 (‘the 2016 Act’) completed Final Stage on 15th March 2016 and received Royal Assent on 12th May 2016. On commencement of this Act, HMO regulation will transfer responsibility for the HMO registration scheme from Northern Ireland House Executive

to councils. It also creates a new licensing system which requires landlords to demonstrate that they are a fit and proper person to be a HMO landlord. This will also be assessed by councils.

3.2 A copy of the 2016 Act can be found at: <http://www.legislation.gov.uk/ia/2016/22/contents>.

3.3 A building or part of a building is a HMO within the meaning of the 2016 Act if the living accommodation is:

- occupied by three or more unrelated persons from three or more families, and
- occupied by them as their only or main residence, and
- either a house, premises or a group of premises owned by the same person with shared basic amenities.

3.4 The 2016 Act lists types of building that are not HMOs, and include, for example, those where the property is occupied only by the owners, buildings occupied by students that are managed and controlled by an educational establishment, where the occupants are members of, and fully maintained by, a religious order whose principal occupation is prayer, contemplation, religious education or the relief of suffering, and buildings owned by the crown and occupied by members of the armed forces.

The Role of Committee in the Decision-Making Process

3.5 As Members are aware, the Licensing Committee has delegated authority for determining applications in relation to a variety of matters, such as Entertainments Licences, where objections have been received. In addition, the Committee is also responsible for determining such other matters of a licensing nature, as the Director of Planning and Place, in consultation with the City Solicitor, deems appropriate.

3.6 Given the licensing/regulatory nature of the 2016 Act and the expertise gained by the Licensing Committee in terms of assessing similar type issues, it is recommended that the Licensing Committee assumes responsibility for determining those applications for a house in multiple occupation where adverse representations are received, where variation of a licence is required, in the determination of a fit and proper person check, and in the revocation of licences, except where in the public interest the Director, in consultation with the City Solicitor, considers that there are particular circumstances which make it necessary to suspend a licence immediately.

- 3.7 Advice from Legal Services is that Standing Orders must be amended to set out those aspects of the 2016 Act for which the Licensing Committee will have delegated authority from Council to determine.
- 3.8 The Committee should note the legislative requirement to process a licence application within a reasonable time. Authorities should aim to determine applications before the end of the period of three months, beginning with the date on which the Council received a valid application form. Although it is appreciated that in certain cases, e.g. where physical changes to the living accommodation are to be made, an additional time period might be required. A court of summary jurisdiction may extend the period in the case of a particular application.

Outline of the Licensing Regime

Licence Requirements

- 3.9 Under the terms of the 2016 Act, a council may only grant the licence is satisfied:
1. The occupation of the property as a HM would not be a breach of planning control;
 2. The owner, and any managing agent, are fit and proper persons;
 3. The proposed management arrangements are satisfactory;
 4. Granting the licence will not result in the over provision of HMOs in the locality; and
 5. The property is fit for human habitation and is suitable for occupation as a HMO.
- 3.10 A HMO licence may include such conditions as the council considers appropriate for the regulation of the management, use and occupation of the HMO and its condition and contents. A licence can be granted for up to 5 years but no less than 6 months.
- 3.11 Under the 2016 Act it is an offence to operate as an unlicensed HMO, to exceed the permitted occupancy or breach the Licence conditions. It is also an offence to claim a property is licensed when it is not and for failure to name a managing agent on the Licence. Councils will also have the power to serve a range of enforcement notices.

- 3.12 Notice of applications must be placed at the property and advertised in a newspaper circulating in the locality of the HMO.
- 3.13 In determining an application for a HMO licence, a council must give the applicant an opportunity of appearing before and of being heard by it, and give any person who has made any such representation, an opportunity of appearing before and of being heard by the council.
- 3.14 Feedback from Members will be incorporated into a subsequent report to the Strategic Policy and Resources Committee on the proposal for Licensing Committee to be responsible for this function, together with the proposed amendments to the Scheme of Delegation.

Refusal, revocation or variation of a licence

- 3.15 The Council has powers under the Act to refuse an application, revoke or make a variation to a licence in a variety of circumstances.

Refusal of a licence

- 3.16 Before it formally considers an HMO application, the Council has the power to refuse to consider it, if it considers that occupation of the accommodation as a HMO would be a breach of planning control.
- 3.17 In considering the application, the Council has to satisfy itself that the applicant, and their agent, has signed a self-declaration confirming fit and proper person status to operate an HMO. If the Council is not so satisfied, they must refuse the application.
- 3.18 The Council must also satisfy itself that the property is suitable for use as an HMO or could be made so by including conditions in the licence. If the Council is not so satisfied, it must refuse the application.
- 3.19 The Fire and Rescue Service has independent responsibility for enforcing fire safety legislation in HMOs in Northern Ireland through the Fire and Rescue Services (NI) Order 2006. Article 48 of the Fire and Rescue Services Order 2006 restricts the extent to which licensing regimes can deal with fire safety. The Council has a duty during inspection to examine the condition of the living accommodation as well as the safety and security of the persons likely to occupy it. The Council should therefore take into account the level of fire safety in the HMO and the extent of its compliance with the Fire and Rescue Services (NI) Order 2006. If a council is of the view that there is a serious fire safety issue which

cannot be resolved that will be referred to the Fire and Rescue Service. Such an issue will also go to the fitness of the applicant to hold a licence.

- 3.20 The Council must have regard to any objections to the application.

Revocation of a licence

- 3.21 A Council may revoke a licence at any time. There are a number of possible grounds that may lead to a revocation of a licence. These include that the licence holder or agent is no longer a suitable person, that the accommodation is no longer suitable for occupation as an HMO and cannot be made suitable, or that there has been a serious breach of the licence conditions. The Act also specifies that it does not matter if the Council has taken any other action or criminal proceedings have been commenced, the licence can still be revoked.

Variation of a licence

- 3.22 The Council can vary the terms of the licence at any time, either at their own discretion or if the licence-holder asks them to do so (for example to make a material change to the property). The licence holder must be given notice and an opportunity to be heard before a variation is imposed, and can appeal a decision to vary or refuse to vary a licence.

Appeals process

- 3.23 Any person on whom the council is required to serve notice of a decision has the right to appeal against the decision. The requirements to serve notice will vary depending on the nature of the decision. Generally, this includes the applicant, and anyone who has made a valid written representation. In some cases, occupants of the premises must also be served a notice.
- 3.24 Any appeal must be made to the Magistrates Court within 28 days of receiving notice.

Proposed Amendments to the Scheme of Delegation

- 3.25 In order to deal with the majority of HMO Licence applications in a timely fashion and with the aim of keeping administrative costs to a minimum it is therefore suggested that the following amendment is made to the Scheme of:

3.26 The Strategic Director of City and Neighbourhood Services is responsible for exercising all powers in relation to the issue, but not refusal, of HMO Licences, excluding provisions relating to:

- applications for the grant, renewal, transfer or variation of licences where objections are received;
- applications where officers believe there may be an issue in relation to the fitness of the applicant to hold a licence;
- approving any guidance documents;
- setting of licence fees;
- revocation of licences, except where in the public interest the Director, in consultation with the City Solicitor, considers that there are particular circumstances which make it necessary to suspend a licence immediately.

3.27 Any amendment to the Scheme of Delegation or Standing Orders must be referred to the Strategic Policy and Resources Committee. Feedback from Members on the proposal for Licensing Committee to be responsible for this function, together with the proposed amendments to the Scheme of Delegation will be reported to the Strategic Policy and Resources Committee. .

3.28 Any decision of Committee in relation to amendments to Standing Orders or the Scheme of Delegation will also be subject to ratification by full Council.

Financial and Resource Implications

3.29 The cost of administering the new licensing regime has been included in the estimates for 2019/20.

3.30 It is proposed to hold a training workshop in January 2019 and bring proposed amendments to the Committee's Operating Protocol on February 2019.

Equality or Good Relations Implications/Rural Needs Assessment

3.31 There are no equality, good relations or rural needs implications associated with this report."

In response to a question from a Member, the City Solicitor confirmed that a process would be developed regarding fee setting, which would be based on a consultant's report on projected cost, to ensure that the process would be cost neutral.

Proposed fees would be presented in due course to the Committee for consideration.

The Committee agreed:

- (i) to assume responsibility for determining all matters under the Houses in Multiple Occupation (HMO) Act NI 2016, with the exception of those which were proposed to be delegated to the Strategic Director of City and Neighbourhood Services;
- (ii) to recommend to the Strategic Policy and Resources Committee, that it amend Standing Order 37 (d) Duties of Committees – Licensing Committee to give effect to the Licensing Committee having delegated authority to determine those applications for a house in multiple occupation as set out in paragraph 3.6 of the report and to include that the Licensing Committee should only consider objections to an application in instances where the objector would be materially affected by the existence of a House in Multiple Occupation.
- (iii) to the amendments to the Scheme of Delegation, as outlined in paragraph 3.28 of the report, subject to the approval of the Strategic Policy and Resources Committee; and
- (iv) that a report be submitted to the Licensing Committee on a monthly basis providing details of those Houses of Multiple Occupation which had been licenced under delegated authority.

Road Closures – Review of the Resources and Costs

The Committee considered the following report:

“1.0 Purpose of Report or Summary of main Issues

1.1 To update Committee on road closures and the cost to administer the scheme and to review the appropriate level of fees Belfast City Council may charge for road closures for special events.

2.0 Recommendations

2.1 Members are asked to consider the information presented and decide whether:

- 1. To continue to keep under review for a further 6 months the costs and resources required; or**
- 2. To ask officers to bring forward proposals for revised fees to a future meeting.**

3.0 Main report

Key Issues

3.1 Committee will recall that, at your meeting in April 2018, you agreed the fees, classification of events and the newspapers that the Statutory Notice is published in for road closures.

3.2 Committee are reminded that they agreed to the following:

Small local event:

3.3 The event is a small, local, neighbourhood event where people attending are not from outside the street (e.g. street party) or immediate neighbourhood. To be considered a 'small event' the event should meet the following criteria:

- 1.** It is held on minor residential roads (e.g. cul-de-sacs or side streets);
- 2.** The proposed road to be closed must not have a bus route along it;
- 3.** The proposed road to be closed must not have a car park located on it which is accessed via the road to be closed (other than a car park for residents of the road);
- 4.** The event must not be publicised for the general public and therefore will not draw in people from the wider area;
- 5.** The event should apply to residents of one or two streets only and not to larger areas of the district/borough/city. It is up to the Council to consider factors such as the proposed attendance figures, etc. when making its decision on whether to grant an Order.
- 6.** The event should finish by 11.00 pm and:
 - a)** Not have a stage built from which entertainment would be provided
 - b)** Not have amplified entertainment which may cause nuisance to the wider area
 - c)** Not have fireworks, pyrotechnics or bonfires on the street
 - d)** Not have alcohol or food sold at the event.

3.4 This list was not exhaustive and each application is considered on a case by case basis. The application cost is free.

Large event:

- 3.5 If the event does not meet the above criteria, then the event is considered a large event. This includes all filming events. The application cost for a City centre event is £1000 and outside the City centre is £650. (City centre is defined using BMAP)

Running, triathlon and cycling races:

- 3.6 1. Commercial events or races that have a substantial impact on the road network or are within the City centre. The application cost is £1000; a reduced fee of £125 for events run by registered charities for fund raising purposes was agreed.
- 3.7 2. Club runs or running races that have minor impact on the road network and are outside the City Centre in a small geographical area. These types of running races are generally organised by voluntary organisations and any profit made from them is used to fund the activities of the club. The application cost is free.

Publication of a Legal Notice

- 3.8 It was agreed that City centre applications are advertised in either the Belfast Telegraph, Daily Mirror (Northern Ireland Edition), Irish News or Newsletter (Ulster Edition) on a rotational basis. Where a special event extends beyond the City centre to various areas of the City, such as the Belfast Marathon, then the Notice is also placed in one of the four main newspapers.
- 3.9 When the event is outside the City centre, the Notice is advertised in a local newspaper circulating in that area. This has proven to be problematic, in that some local newspapers are only published on a fortnightly basis and often applications for local events are received at short notice meaning that the advert has had to be placed in a main Newspaper, thus resulting in additional expenditure.
- 3.10 Where it has been possible applications for multiple road closures have been combined into one Notice to help reduce advertising costs.
- 3.11 Since June 2018, the Council has made 26 Orders for 34 events to close or restrict roads. Appendix 1 (attached) has details of the actual events and the cost for each Order. Below is a summary for the events as per the agreed classification.

- Small event: 2
- Large event (City centre): 10
- Large event (Outside City centre): 8
- Commercial runs including triathlon: 3
- Commercial runs reduced fee (charity): 1
- Club runs: 2

3.12 The following table shows an overview of the total income and expenditure related to processing 26 Road Closure Orders to date resulting in an additional cost to the Council of £14,263.58.

Fee Income	Notice cost	Officer cost	Expenditure	Deficit
£18,325.00	£20,562.68	£12,025.90	£32,588.58	- £14,263.58

Review of fees

3.13 The current road closure fees were set at your meeting in April when Committee agreed that a review of the resources and costs associated with administering the Act would be undertaken after 6 months.

3.14 In processing the 26 applications we have recorded officer time spent on each application and the cost of the public Notice (which will vary for each application) to provide an accurate reflection of the cost of administering the scheme.

3.15 From those figures, we have worked out the average cost of processing each application as set out below compared with the fee the Council receives.

Application Type	Ave. processing cost	Current fee
Large event (City centre)	£1,470.40	£1000
Large event (Outside centre)	£786.86	£650
Large running event	£2,598.95	£1000

3.16 Committee is asked to note the costs in comparison to fee income. In particular, the high cost of processing large running type events has been due to the complexity of the number of roads to be closed or restricted, which required large notices being placed in the newspapers.

- 3.17 Committee is asked to decide whether they wish to continue to keep under review, for a further period of time, the costs and resources required to administer Road Closures, or if you wish Officers to bring forward proposals for revised fees based on information gathered to date.

Financial & Resource Implications

- 3.18 There are direct financial costs attached to the administration of the Act by the Council and, whilst fees have been set, the cost to administer the scheme is only partially recovered from applicants based on our information to date.
- 3.19 As more Road Closure applications are processed, the resources and costs associated with administering the Act will be regularly reviewed to ensure that any suggested adjustments to fees may be brought to Committee for further consideration.

- 3.20 **Equality or Good Relations Implications/Rural Needs Assessment**

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

The Committee agreed, based upon the information which had been presented regarding the resources and costs associated with road closures, that officers would submit proposals for revised fees for special events to a future meeting.

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

Applications Approved under Delegated Authority

The Committee noted a list of licences and permits which had been issued under the Council’s Scheme of Delegation.

Application for the Renewal of Seven-Day Annual Entertainments Licences – Boyles Bar, 91 Falls Road

The Committee was reminded that, under the terms of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985, it had a duty, when considering any application for the grant, renewal or transfer of an Entertainments Licence, to take into account any convictions of the applicant relating to an offence under the Order which had occurred within a five-year period immediately preceding the date on which the application had been made.

Accordingly, the Building Control Manager drew its attention to an application which had been received for the renewal of the Annual Indoor Entertainments Licence in respect of Boyles Bar, 91 Falls Road, Belfast.

He reported that the licensee had, on 13th December, 2016, been fined £250 and instructed to pay costs of £66, following an inspection by Council officers, which had found that entertainment was being provided without an Entertainments Licence.

He pointed out that an application for the grant of an Entertainments Licence had been approved by the Committee on 18th January, 2017. Over the past year, when the premises had been inspected, officers had found that all management procedures were being implemented effectively.

He confirmed that no written representations had been received in relation to the applications and that the Northern Ireland Fire and Rescue Service and the Police Service of Northern Ireland had offered no objections.

The Committee agreed to renew the Annual Indoor Entertainments Licences in respect of Boyles Bar, 91 Falls Road, Belfast.

Review of Stationary Street Trading Licences – Fountain Lane

The Committee agreed to defer, until its meeting in December, consideration of its decision of 16th May to revoke a Stationary Street Trading Licence for a designated site in Fountain Lane, to allow officers to obtain further information regarding the licensee's proposal for the repayment of his outstanding licence fees.

Licensing Committee Protocol and Overview of Licensing

Following the conclusion of the meeting, Ms. Denise Kiley, Barrister-at-Law, delivered a training session for Members, which focused primarily upon the general principles for decision making for quasi-judicial committees.

Chairperson