

Licensing Committee

Wednesday, 16th December, 2020

MEETING OF LICENSING COMMITTEE HELD REMOTELY VIA MICROSOFT TEAMS

Members present: Councillor Donnelly (Chairperson);
Alderman Sandford; and
Councillors Bradley, Bunting, Howard, Hussey,
Hutchinson, M. Kelly, T. Kelly, Magee, Magennis,
McAteer, McCabe, McCullough, McKeown,
Nicholl and Smyth.

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

Apologies

An apology for inability to attend was received from Alderman Copeland.

Minutes

The minutes of the meeting of 18th November 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 December, subject to the omission of those matters in respect of which the Council had delegated its powers to the Committee.

Declarations of Interest

No declarations of interest were recorded.

Presentations

Mr. D. Boyle

The Chairperson welcomed Mr. Boyle, a private landlord, to the meeting.

Mr Boyle informed the Committee that he was requesting that the report to be considered by the Members regarding proposed process for dealing with new licence applications for premises which previously operated as a HMO, be deferred until January's meeting of the Licensing Committee to allow for consideration of the issues contained in the report.

He further informed the Committee that HMOs were critical in the provision of housing in Belfast, that they provided affordable housing to a cross section of society including:

- Homeless;
- Single people on low income;
- Victims of domestic abuse;
- People suffering with addiction;
- Refugees;
- Tourists; and
- Students

He highlighted that there was various industries attached to the provision of HMOs, providing employment, including carpet fitters, painters, plasterers and furniture outlets. He added that it was local people, gaining employment by providing safe accommodation.

Mr. Boyle reported that he contested valid objections being made against HMO applications, and the application process, whereby landlords were being held responsible for noise complaints from tenants who no longer lived in their properties, and had not for many years or before the landlord had purchased the property.

Mr. Boyle summed up by adding that he felt the administration of HMO applications and renewals needed to be reviewed.

A Member asked Mr. Boyle to clarify his position with regard to the status of valid complaints. Mr. Boyle replied by stating that he felt that it was unfair that anyone could make an objection to a HMO application, whether they were directly affected by the application or not, and that those objections where an individual made an objection whereby they are not directly affected, should not be considered as a valid objection by the Council.

He added that an application on a property that had previously operated as a HMO, where the licence had expired, should not be treated as a new application, even though the application may have been out of time.

In response to a further question from a Member regarding the responsibility of making renewal applications lying with the applicants, Mr. Boyle stated that the Housing Executive had previously taken the decision to cease sending renewal reminders to licence holders but had failed to inform those licence holders that the reminder letters would no longer be issued.

The Chairperson thanked Mr. Boyle for his presentation to the Committee.

Mr. M. McMahon

The Chairperson welcomed Mr. McMahon, a Property Agent, to the meeting.

Mr. McMahon informed the Members that he was involved with the registration and licensing of a large number of HMO properties which were predominantly situated in the University Area of south Belfast. He added that the area accommodated students, refugees, young professionals, migrant workers and asylum seekers.

He advised the Committee that the Northern Ireland Housing Executive, together with landlords in the Holylands area, had invested millions of pounds in upgrading substandard dwellings to meet the demand for shared accommodation. He added that, as a result, the population of the area had changed and was mostly a transient population and not an area predominantly occupied by families.

He stated that the HMO accommodation market was very fluid and highlighted that, although student numbers and shared accommodation had declined over the previous months as a result of the pandemic and the provision of online learning by the universities, there had been a growth in other sectors such as migrant workers, young professionals and asylum seekers.

He added that students did, however, make up the majority of occupants in the area and that there had been a number of enquiries from students who resided in the new purpose built student accommodation in the city, who were uncomfortable living in a building with hundreds of other students as a result of the pandemic, and wished to leave in a smaller household.

He summed up by stating that HMO accommodation was much more affordable for students than the purpose built accommodation, and it was important that students had a choice on where to reside while at university in order to minimise costs.

In response to a question from a Member requesting how Mr. McMahon thought the future of the Holylands area would look in five to ten years' time, he stated that the area was not desirable to families and that, although the Holylands was mostly occupied by students, it remained a diverse area.

The Chairperson thanked Mr. McMahon for his presentation to the Committee.

Mr. S. Magill – LANI

The Chairperson welcomed Mr. Magill from the Landlords Association of Northern Ireland (LANI) to the meeting.

Mr. Magill explained that he was a landlord, an agent and had, in the past, been a private rental tenant, received housing benefit and resided in the Holylands area. He added that the 2016 HMO Act and the transfer of its powers to the Council had not concerned landlords and assumed that, following discussions with the Minister, MLAs, the Department for Communities and HMO staff, the transfer to the Council would be seamless. However, he reported that the application process had become extensive,

that planning permission was required, and that landlords had to undertake a fit and proper person test, requirements that were not previously sought by the Housing Executive and were not referred to in the 2016 HMO Act.

He referred to occasions when HMO officers had contacted landlords to inform them that as they had not renewed their licence, they had been operating illegal HMOs and therefore liable to large fines.

He explained that the recent proposed changes to the administration procedure, including the requirement of an out of hours contact numbers and stated that the consideration of noise complaints up to five previous years was an unfair requirement, as many landlords were not aware of the complaints, or did not own the property at the time.

The Chairperson thanked Mr. Magill for his presentation to the Committee.

Delegated Matters

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

Licenses Issued Under Delegated Authority

The Committee noted the applications that had been issued under the Scheme of Delegation.

Designation of Street Trading Sites

The Building Control Manager reminded the Committee that, at its meeting in November, it had agreed that the statutory consultation process in relation to the consideration of the designation of a number of proposed new street trading sites should commence, and that Members had asked for further details to be provided on the proposed sites.

He provided Members with a detailed overview of the following proposed sites:

- Lockview Road;
- Upper Newtownards Road;
- Comber Greenway;
- Dublin Road;
- King Street;
- North Road; and
- Castle Junction.

He informed the Committee that the statutory notice had been published and that any representations received, relating to the proposed designation, would be brought before the Committee for consideration.

He further informed the Members that consultation with the PSNI, the Department for Infrastructure and others had also been initiated and that the responses would form the basis of the future report that would be presented for consideration and

that Members would also be able to determine any restrictions on the commodities to be sold and make any recommendations regarding the hours of trading.

The Committee was advised that written notification had been received from the applicant withdrawing the application to designate the site at 123 Miltown Road in the car park of Shaw's Bridge Sports Association and that the application no longer formed part of the consultation process.

The Committee noted the content of the report.

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

The Committee noted the applications that had been issued under the Scheme of Delegation.

**Applications for the renewal of a Licence to operate
a House of Multiple Occupation for 2 St Albans Gardens**

The HMO Unit Manager provided an overview of the application and explained that, as a valid objection had been received, the application must be considered by the Committee, pursuant to the 2016 Act and legal advice.

He advised that no noise complaints had been received in relation to the property.

The Committee approved the application for the Grant of the renewal of a Licence to Operate a House of Multiple Occupation for 2 St Albans Gardens.

**Applications for the renewal of a Licence to operate
a House of Multiple Occupation for 7 Sandymount Street**

The HMO Unit Manager provided an overview of the application and explained that, as a valid objection had been received, the application must be considered by the Committee, pursuant to the 2016 Act and legal advice.

He advised that a warning notice regarding nighttime noise had been issued on 7th September, 2016, in relation to the property.

The Committee approved the application for the Grant of the renewal of a Licence to Operate a House of Multiple Occupation for 7 Sandymount Street.

Applications for the renewal of a Licence to operate a House of Multiple Occupation for 61 Sandhurst Gardens

The HMO Unit Manager provided an overview of the application and explained that, as a valid objection had been received, the application must be considered by the Committee, pursuant to the 2016 Act and legal advice.

He advised that no noise complaints had been received in relation to the property.

The Committee approved the application for the Grant of the renewal of a Licence to Operate a House of Multiple Occupation for 61 Sandhurst Gardens.

Applications for a New Licence to operate a House of Multiple Occupation for 11 Penrose Street

The Committee deferred consideration of the application to its meeting scheduled to take place on 20th January, 2021.

Addendum report in respect of an application for a New Licence to operate a House of Multiple Occupation for 32 Stranmillis Gardens

The Committee deferred consideration of the application to its meeting scheduled to take place on 20th January, 2021.

Non-Delegated Matters

Licence Fees for Sex Establishments

The Building Control Manager advised Members that, under Article 4 and Schedule 2 of The Local Government (Miscellaneous Provisions) (NI) Order 1985 (the Order), the Council had powers relating to the Licensing of Sex Establishments, and that paragraph 19, Schedule 2 provided that an applicant for the grant, renewal or transfer of a licence shall pay a reasonable fee determined by the council.

He reminded the Committee that the current Sex Establishment Licence fees were set at its meeting in June 2016 and the Committee had agreed that a review of the fees be conducted each year.

He reported that a review of the time allocated to each task in the licensing process had been undertaken and costing estimates reviewed and that the analysis had demonstrated that the current fees, as agreed by the Licensing Committee in September 2019, were still proportionate to the cost of the processes associated with administering a Sex Establishment Licence.

The Committee agreed that the fees, which had been reviewed in September 2019, remained unchanged.

Pavement Café Licence Hours of Operation

The Building Control Manager reminded the Committee that, at its meeting in December 2016, it had determined a number of matters in relation to the administration of the Licensing of Pavement Cafés Act (NI) 2014, including setting Pavement Café Licence fees, agreeing the Standard Conditions to be attached to licences and amendments to the Scheme of Delegation to outline those matters that would be brought before the Licensing Committee for consideration.

He informed Members that, in June, a temporary process for considering pavement café applications had been introduced to assist the hospitality sector during the pandemic. The process included drafting temporary guidance for applicants, based on the Department for Communities guidelines, and supplementary guidance from the Licensing Forum Northern Ireland which had been produced when the Act came into force.

He advised the Committee that Councils may set the hours and days of use for the pavement café area having regard to the location, likely disturbance to local residents or other businesses and representations from interested parties.

He further advised that the supplementary guidance offered general advice around the hours of operation of pavement cafés to maintain consistency across Northern Ireland. It advised that pavement cafés should be licensed between 8.00 am and 11.00 pm and be reflective of the normal operating hours of the business. There had also been advice that, if the premises were licensed under the Licensing Order, a licence would not be issued beyond 11.30 pm, regardless of the additional operating hours that may apply to the premises.

He reported that the Council has now received a number of applications from premises with a Liquor Licence, where the hours applied for were not representative of the Council's guidance document or the current requirements of the N.I. Executive. Some applicants had requested a later finishing time up to 1.00 am, although those applications had generally been submitted before the N.I. Executive requirement that licensed premises were to be closed by 11.00 pm.

The Building Control Manager informed the Members that under the current liquor licensing law, normal trading hours for licensed premises had been 11.30 am to 11.00 pm on weekdays, 12.30 pm to 10.00 pm on Sunday or Christmas Day.

He reminded the Committee that any application for an Outdoor Entertainments Licence would be issued under delegated authority with a latest finishing time of 11.00 pm and for any licensee that wished to provide outdoor entertainment later than 11.00 pm, such applications would be brought before the Licensing Committee for consideration.

Following discussion, Members agreed that the standard hours for which a Pavement Café licence may be permitted to operate would be set as 7.00 am to 11.00 pm, and to delegate authority to the Director of Planning and Building Control to grant any application for a pavement café licence to trade earlier or later than the standard times of 7.00 am to 11.00 pm.

The Committee further agreed that officers would provide a fortnightly report to Members with details of applications received for pavement café licenses.

Amendment of Standard Terms and Conditions to include an Emergency Out of Hours Contact Number

The Divisional Solicitor presented the Committee with an update in respect of the following report:

“1.0 Purpose of Report or Summary of main Issues

1.1 To consider amendment of the Standard Terms and Conditions attached to licences for the use of premises as a House in Multiple Occupation (HMO) to include a requirement to provide an emergency out of hours contact number.

2.0 Recommendations

2.1 Taking into account the information presented Committee is asked to amend the Standard Terms and Conditions attached to a HMO licence to allow the landlord or managing agent to be contacted in circumstances where there is anti-social behaviour occurring at the HMO property and the co-operation of the tenants cannot be secured.

2.2 If Committee does agree to amend the standard conditions, delegated authority is sought to grant any outstanding applications in respect of which a special condition was proposed without such condition.

3.0 Main report

Key Issues

3.1 Section 10(6) of the Houses in Multiple Occupation Act (Northern Ireland) 2016 (‘the 2016 Act’) sets out the matters which are relevant for deciding whether an owner or managing agent is a fit and proper person for the purposes of granting a licence.

3.2 Amongst other considerations, the Council must have regard to any anti-social behaviour engaged in by the owner or manager, and the owner or manager’s conduct as regards any anti-social behaviour engaged in by the occupants of any relevant living accommodation whilst in the accommodation, or adversely affecting the occupants of any such accommodation.

- 3.3** For the purpose of Section 10(6) “anti-social behaviour” means acting or threatening to act in a manner causing or likely to cause a nuisance or annoyance to a person residing in, visiting or otherwise engaging in a lawful activity in residential premises or in the locality of such premises, or using or threatening to use residential premises for illegal purposes.
- 3.4** Section 14 (1)(a) of the 2016 Act provides that the Council may include such conditions as the Council considers appropriate for regulating the management, use and occupation of the HMO. Such conditions may include the requirement to take reasonable and practicable steps to prevent or reduce anti-social behaviour by persons occupying or visiting the HMO.
- 3.5** At its meeting on 20th February 2019 the Committee approved standard licence conditions. These conditions apply to all houses in multiple occupation (HMOs) in Northern Ireland, and will be attached to all licences as they are issued. They are imposed for the purpose of regulating both the management, use and occupation of the HMO, and its condition and contents. The Council may include further special conditions as it considers necessary.
- 3.6** At its meeting on 20th February, 2019 the Committee also approved a guidance document entitled ‘Tackling Anti-Social Behaviour in HMO Properties, A Guide for Owners and Managing Agents’ provides guidance to landlords on the remedies and preventative measures that can be taken to manage anti-social behaviour, how to best demonstrate compliance via record keeping and intervention, and the development of an anti-social behaviour plan.
- 3.7** It is acknowledged that responsible HMO landlords want to be good neighbours, take the behaviour of their tenants seriously and already endeavour to resolve any alleged anti-social behaviour linked to their properties. Councils will continue to support landlords in doing so.
- 3.8** Historically Council had considered that sharing information about alleged anti-social behaviour or any enforcement action against occupants was unlawful. However with the introduction of the new licensing scheme officers reviewed this position and determined that certain information could be provided in light of the new statutory scheme. This move was broadly welcomed by landlords.
- 3.9** In the course of that review it became apparent that it is very difficult for Environmental Health to effectively deal with noise and other anti-social behaviour immediately given

legislative restraints and the transient nature of the occupancy of most of these properties. There will also be incidences of anti-social behaviour which are not enforceable under noise legislation but are nonetheless causing a significant disturbance.

- 3.10 Upon some reports being presented to Committee where there had been issues relating to noise Committee requested that a special condition be included to provide an out of hours contact number to deal with noise issues at a property. Given this indication from Committee officers have considered the imposition of such a condition for those applications where there has been a noise issue reported at the property over the lifetime of the licence.
- 3.11 Whilst most landlords have been content to agree to the special condition, there have been objections from some and LANI have also raised concerns.
- 3.12 Amongst the other concerns raised some landlords have alleged that the imposition of such a condition is a breach of a landlord's rights under Article 1 Protocol 1 of the European Convention on Human Rights (the Convention'). This relates to the right to peaceful enjoyment of a person's own property. Officers have also been asked whether the Council carried out 'a human rights impact assessment' in respect of the proposed inclusion of such a condition.
- 3.13 Article 6 of the Human Rights Act 1998 states that "It is unlawful for a public body to act in a way which is incompatible with a Convention right." However Article 1 Protocol 1 of the Convention is not an absolute right. This means that it can be interfered with to the extent that it is considered necessary or proportionate to do so in order to achieve a legitimate aim. In this particular context the Council must also have regard to the competing rights of those affected by noise. Similarly their rights are engaged under Article 1 Protocol 1 and also under Article 8 of the Convention which relates to the right to respect for private and family life, home and correspondence. Therefore in determining whether to impose special licence conditions, the Council must strike an appropriate balance between the human rights of those who own HMOs and those who live beside them.
- 3.14 Officers have carefully considered the issues which have been raised and what was sought to be achieved in requiring an out of hours number. There is a clear statutory obligation upon HMO landlords to be responsible for managing anti-

social behaviour at their properties. They are also likely to have the most up to date contact details for their tenants and/or their guarantors if needed and it is considered that tenants may be more likely to comply with council officer requests if they are aware their landlord could be contacted with the potential ramifications that may have on their tenancy etc.

- 3.15 Officers have come to the conclusion that it would be more appropriate to include a standard condition requiring all landlords to provide an emergency out of hours contact number rather than applying a special condition on an ad hoc and reactive basis upon the renewal of each individual licence.
- 3.16 It is envisaged that this number will only be used where the anti-social behaviour is causing an unacceptable disturbance to neighbours or in the area generally and that there has been a failure to comply with a reasonable request from an officer of the council or PSNI by the occupants. The landlord or managing agent will generally not be expected to attend the property, nor will they be expected to manage anti-social behaviour which is not directly occurring on, or connected to, their premises. In this regard it is also considered that the proposal is proportionate to the aim which is sought to be achieved.
- 3.17 If Committee agree to the inclusion of such a Standard Condition the Council will amend the Standard Conditions and notify all registered landlords of the change. It will also provide some general guidance as set out above to reassure landlords that this will only be used in very limited circumstances.
- 3.18 Furthermore, delegated authority is sought to grant any outstanding applications in respect of which it was proposed to include a special condition without same given the standard licence conditions are to be amended.

Financial and Resource Implications

- 3.19 None.

Equality and Good Relations Implications

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

The Committee agreed to amend the Standard Terms and Conditions attached to a HMO licence to allow the landlord or managing agent to be contacted in circumstances where there is anti-social behaviour occurring at the HMO property and the co-operation of the tenants cannot be secured.

The Committee further agreed to delegate authority to the Director of City and Neighbourhood Services to grant any outstanding applications in respect of which a special condition was proposed without such condition.

Amendment of the Scheme of Delegation to Delegate Authority to determine Some Renewal Applications with Objections

The Divisional Solicitor presented the Committee with an update in respect of the following report:

“1.0 Purpose of Report or Summary of main Issues

1.1 To consider amendment of the Scheme of Delegation in respect of applications for renewal of a licence for the use of premises as a House in Multiple Occupation (HMO).

2.0 Recommendations

2.1 Taking into account the information presented Committee is asked to consider whether it wishes to amend the Scheme of Delegation to allow officers to grant a renewal application for a HMO licence where a valid objection has been received but where the objection relates to overprovision, either directly or indirectly.

2.2 Amendment of the Scheme of Delegation does not fall within the scope of the delegated authority for Committee and must therefore be ratified by Council.

3.0 Main report

Key Issues

3.1 Members will recall that a report was brought to Committee at its last meeting seeking authority to amend the Scheme of Delegation to allow officers to grant renewal applications where a valid objection has been received but the objection relates to over provision.

3.2 Members are reminded that Section 20 of the Houses in Multiple Occupation Act (NI) 2016 states that councils cannot refuse a renewal application on the grounds of overprovision or breach of planning control.

- 3.3 Authority was also sought to delegate authority to officers to grant renewal applications where the objections which were raised were general in nature and not specific to the property in question.
- 3.4 Members expressed some concerns about the proposed amendments to the Scheme of Delegation and it was agreed to defer making a decision until Committee's next meeting.
- 3.5 Paragraph 3.6.27 of the Scheme of Delegation permits officers to exercising all powers in relation to the grant (but not refusal) of HMO licences, except in certain circumstances. One of those exceptions is where material objections are received. This means that where a material objection has been received the application must be referred to Committee.
- 3.6 Council continues to receive objections in relation to renewal applications which raise general issues about overprovision or raise concerns about other issues in the general area which are not specific to either the property, owner or managing agent of the property. In accordance with the 2016 Act these objections are valid and whilst not dismissing the alleged issues, legal advice has consistently been that refusal of an application on the basis of such an objection would not be sustainable.
- 3.7 It is considered that this process is unfair to the applicants and indeed to objectors. It also brings applications to Committee unnecessarily which increases work load for both Committee and officers. However in light of concerns raised at the last meeting officers are only seeking delegated authority to determine renewal applications where there is an objection on the grounds of overprovision.
- 3.8 At the last Committee meeting a member suggested that officers should consider whether delegated authority should be granted in respect of all renewal applications where an objection has been received if Legal Services advise that refusal would not be sustainable.
- 3.9 This has been considered by officers and there is no legal impediment to such an approach. However officers recognise that the issues associated with HMO are controversial and as the licensing scheme remains relatively new it may be more appropriate for Committee to retain a higher level of decision making at this stage. There are also potentially reputational issues for the Committee in delegated such powers to the Council's Legal Services without Committee having heard the objectors.

Financial and Resource Implications

3.10 None.

Equality and Good Relations Implications

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

The Committee agreed to amend the Scheme of Delegation to delegate authority to the Director of City and Neighbourhood Services to grant a renewal application for a HMO licence where a valid objection had been received, but where the objection related to overprovision, either directly or indirectly.

Proposed process for dealing with new licence applications for premises which previously operated as a HMO

The Committee deferred consideration of the report to its meeting scheduled to take place on 20th January, 2021.

Chairperson