



Subject:	Application for a New Licence to operate a House of Multiple Occupation for 38 Wolseley Street, Belfast, BT7 1LG
Date:	17 August 2022
Reporting Officer:	Kevin Bloomfield, HMO Unit Manager, Ext. 5910
Contact Officer:	Kevin Bloomfield, HMO Unit Manager, Ext. 5910 Nora Largey, City Solicitor, Ext. 6049

Is this report restricted?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Is the decision eligible for Call-in?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

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). <table border="1"><thead><tr><th>Premises</th><th>Application No.</th><th>Applicant(s)</th><th>Managing Agents</th></tr></thead><tbody><tr><td>38 Wolseley Street, Belfast, BT7 1LG</td><td>9156</td><td>Mr Gareth Macklin & Ms Cara Macklin</td><td>None</td></tr></tbody></table>	Premises	Application No.	Applicant(s)	Managing Agents	38 Wolseley Street, Belfast, BT7 1LG	9156	Mr Gareth Macklin & Ms Cara Macklin	None
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.								

<p>2.2</p> <p>2.3</p> <p>2.4</p>	<p><u>Notice of proposed decision</u></p> <p>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</p> <p>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.</p> <p>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.</p>
<p>3.0</p>	<p>Main report</p>
<p>3.1</p> <p>3.2</p> <p>3.3</p> <p>3.4</p> <p>3.5</p> <p>3.6</p>	<p><u>Background</u></p> <p>The property had the benefit of an HMO licence in the name of the existing owner which expired on the 04 May 2021.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p><u>Key Issues</u></p> <p>Pursuant to the 2016 Act, the Council may only grant a licence if it is satisfied that:</p> <ul style="list-style-type: none"> 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— <ul style="list-style-type: none"> (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. <p><u>Planning</u></p> <p>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.</p>

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 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.
	<p><u>Objections</u></p>
3.22	No objections have been received in relation to this application.
	<p><u>Attendance</u></p>
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

3.32 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.

3.33 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:-

3.34	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.
3.35	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
3.36	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 ”.
3.37	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.
3.38	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.
3.39	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%.
3.40	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.
3.41	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.

3.42	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.
3.43	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.
	<u>Financial and Resource Implications</u>
3.44	None. The cost of assessing the application and officer inspections is provided for within existing budgets.
	<u>Equality and Good Relations Implications</u>
3.45	There are no equality or good relations issues associated with this report.
4.0	Appendices – Documents Attached
	<ul style="list-style-type: none"> • Appendix 1 – Location Map • Appendix 2 – HMO policy area “HMO 2/22 Botanic, Holylands and Rugby” • Appendix 3 – Notice of Proposed Decision dated 27 June 2022 • Appendix 4 – Outstanding Works • Appendix 5 – Representation received on 26 July 2022 in response to the proposed decision. • Appendix 6 – Additional representations received 3 August 2022