



Subject:	Application for a New Licence to operate a House of Multiple Occupation for 118 University Avenue, Belfast, BT7 1GZ
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	<p>To consider an application for a Licence permitting the use of premises as a House in Multiple Occupation (HMO).</p> <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>118 University Avenue, Belfast, BT7 1GZ</td><td>9272</td><td>Mr Ignatius McCluskey</td><td>M&M Property Services</td></tr></tbody></table>	Premises	Application No.	Applicant(s)	Managing Agents	118 University Avenue, Belfast, BT7 1GZ	9272	Mr Ignatius McCluskey	M&M Property Services
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	<p>Taking into account the information presented Committee is asked to hear from the Applicant and make a decision to either:</p> <ul style="list-style-type: none">(i) Grant the application, with or without any special conditions; or(ii) Refuse the application. <p><u>Notice of proposed decision</u></p>								
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
	<u>Background</u>
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.
	<u>Key Issues</u>
3.4	<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.
	<u>Planning</u>
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.
	<u>Fitness</u>
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	<p>The NIHMO Unit has consulted with the following units within the Council’s City and Neighbourhood Services Department –</p> <ul style="list-style-type: none"> (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	<p>The Applicant has confirmed that they have not been convicted of any relevant offences as set out at paragraph 3.6 of this report.</p>
3.9	<p>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.</p>
3.10	<p>Officers are not aware of any other issues relevant to the Applicant’s fitness.</p>
	<p><u>Overprovision</u></p>
3.11	<p>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.</p>
3.12	<p>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.</p>
3.13	<p>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.</p>

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 3 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 " <i>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</i> ".
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
	<u>Financial and Resource Implications</u>
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.
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 – Managers representation received on 27 July 2022 in response to the Notice of Proposed Decision. • Appendix 6 – Applicant's solicitor's response to Notice of Proposed Decision • Appendix 7 – Refusal of Application - Breach of Planning Control - 2 March 2021 • Appendix 8 – CLEUD – Date Decision Issued