

Licensing Committee

Monday, 6th October, 2014

SPECIAL MEETING OF LICENSING COMMITTEE

Members present: Alderman Ekin (Chairman);
Aldermen McCoubrey, Rodgers and Stalford;
Councillors Attwood, M. E. Campbell, Clarke,
Hussey, Hutchinson, McCarthy, Mullan and
Reynolds.

In attendance: Mrs. S. Toland, Lead Operations Officer/
Head of Environmental Health;
Mr. T. Martin, Head of Building Control;
Ms. N. Largey, Solicitor; and
Mr. H. Downey, Democratic Services Officer.

Apologies

Apologies for were reported on behalf of Aldermen R. Patterson and Webb and Councillors Cunningham, Groves and Ó Donnghaile.

Declarations of Interest

No declarations of interest were reported.

THE COMMITTEE DEALT WITH THE FOLLOWING ITEM IN PURSUANCE OF THE POWERS DELEGATED TO IT BY THE COUNCIL AT ITS MEETING ON 1st MAY, 2007 IN ACCORDANCE WITH STANDING ORDER 46

Application for the Grant of an Amusement Permit – Onassis Amusements, 25-41 Botanic Avenue

The Committee was advised that an application had been received from Hazeldene Enterprises Limited for the grant of an Amusement Permit in respect of the above-mentioned premises. The Council's Solicitor reported that written representation had been received on behalf of Oasis Retail Services Limited, which operated a number of amusement arcades across the City. She confirmed that the objector's legal representative had requested that the matter be deferred by the Committee until such time as a pending Judicial Review of its decision to grant an Amusement Permit for another premises had been determined and documentation which had been submitted by the applicant in the lead up to this meeting had been evaluated.

She suggested that the Committee might, at this stage, wish to hear from the representatives of the objector and the applicant regarding the request for the deferral. The Committee endorsed that course of action and Mr. L. McCollum Q.C., Ms. K. Mairs, Solicitor, together with Mr. M. Trimble of Oasis Retail Services Limited, were admitted to the meeting.

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Mr. McCollum reported that there was a Leave Application pending regarding a Judicial Review of the Committee's decision of 19th March to grant an Amusement Permit for a premises in Bradbury Place. The Judicial Review would seek to challenge the criteria governing the Council's Amusement Permit Policy and the way in which it had been applied by the Licensing Committee in determining that application. He pointed out that, if successful, the Council would be required to revisit its Policy, which could potentially have a material impact upon the determination of the application for the premises in Botanic Avenue. Therefore, he requested that the Committee defer the matter until the Judicial Review had been concluded.

He referred also to surveillance reports which had been submitted by the applicant's legal representatives beyond the date stipulated by the Building Control Service. He pointed out that the fitness of his client was not material to this application. However, should the Committee feel that the reports were material, his client had the right to defend himself and, therefore, additional time would be required to enable the information to be reviewed in full and any allegations addressed. He advised the Committee that none of the criticisms made against his client could be justified.

The representatives were thanked by the Chairman and they retired from the meeting.

Mr. J. Burns, the applicant, together with Mr. S. Beattie Q.C. and Mrs. C. Colton, his legal representatives, and Mr. I. Foster, Planning Consultant, were admitted to the meeting and advised of the points which had been raised by the objector's legal representative in seeking the deferral of the application.

Mr. Beattie highlighted the length of time which had elapsed between the granting of the Amusement Permit for the premises in Bradbury Place and the submission of the Leave Application. He made the point that, should the Leave Application be granted, it would be a considerable length of time before the Judicial Review and any potential appeal would be concluded. The prospect for delay was, therefore, significant and that would have a detrimental impact upon his client's business. In terms of the content of the late submission, he accepted that the fitness of the objector was not of relevance to this application, however, it had been provided to highlight wider issues around the equity of the situation and the enforcement of the Betting, Gaming, Lotteries and Amusements Order (Northern Ireland) 1985 generally.

The deputation then retired from the meeting.

After discussion, the Committee agreed not to accede to the request to defer consideration of the application, on the grounds that it did not attach any weight to the content of the late submissions which had been made on behalf of the applicant and, since it would take some time for the Judicial Review and any potential subsequent appeal to be concluded, it could prejudice the applicant's commercial interests.

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The Committee then proceeded to consider the following report relating to the application for the grant of the Amusement Permit:

“1 Relevant Background Information

- 1.1 Members are reminded that, at your meeting on 18th June, you agreed that a special meeting be held to consider the following application for the grant of an Amusement Permit under the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985:**

Premises and Location	Ref. No.	Applicant
Onassis Amusements 2nd Floor 25-41 Botanic Avenue Belfast, BT7 1JG	WK/2014/0632	Hazeldene Enterprises Ltd.

- 1.2 The directors of Hazeldene Enterprises Limited are Mr John Gerard Burns and Ms Kelly Mary Burns.**

- 1.3 The application is for a total of 227 gaming machines of which all 227 machines are to pay out a maximum all cash prize of £25.00. In the case of premises that have machines with a maximum cash prize of £25.00 admission is restricted to persons aged 18.**

- 1.4 The proposed opening hours of the premises, as specified on the application, are:**

Monday to Sunday: 8.00 a m to 5.00 a m the following morning

- 1.5 However, the applicant has confirmed that the hours below, as granted by their Planning Permission, should have been specified on the application form:**

Monday to Saturday:	9.00 a m to 11.30 p m
Sunday:	12.00 p m to 11.30 p m

- 1.6 The proposed amusement arcade is to be located in a three storey terraced building on the main Botanic Avenue, formally known as the Belfast Civic Arts Centre. The area of the premises intended to be licensed to provide amusement by means of gaming machines is the second floor.**

- 1.7 The entrance to the premises is from the main Botanic Avenue and via a staircase to the second floor.**

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- 1.8 A Building Regulations application for the refurbishment of a theatre to a bingo hall was submitted to the Service on 30th June 2010 and the works were completed on 2nd September 2010 to the satisfaction of the Service.
- 1.9 A further Building Regulations application was received on 16th June, 2014 for the fit out of the second floor of the premises for an amusement arcade and the works have commenced on site.
- 1.10 A location map has been circulated to the Committee.

2 Key Issues

- 2.1 Members are reminded that the Licensing Committee is responsible for determining all applications relating to the grant of Amusement Permits.

Objections

- 2.2 As a result of the public notices of application, the Building Control Service has received one objection to the application.

- 2.3 A summary of the objection is as follows:

- the suitability of the applicant - the objector has concerns with regards to the applicants ability to run the property having due regard to the legal requirements pursuant to the Betting, Gaming, Lotteries and Amusements (NI) Order 1985.
- there is a significant number of premises/businesses with the benefit of amusement permits in the locality of the applicant's premises and, as a consequence, there is no need for an additional business of this nature and in this regard we are mindful of the criteria outlined in the Belfast City Council Amusement Permit Policy which was adopted by the council on 1st May 2013.

- 2.4 A copy of the letter of objection has been circulated to the Committee.

- 2.5 Upon receipt of the objection, clarification was sought regarding the objector's concern over the suitability of the applicant. In response, the objector states that they have lodged their objection on the following points:

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- 1. A Pending Judicial Review**
- 2. Bingo Club Application**
- 3. Fitness of Applicant**
- 4. Police Objection**
- 5. Locality and Suitability of the Premises and Compliance with Belfast City Council Amusement Permit Policy**
- 6. History of the Location**

2.6 The details of their objection points are summarised as follows:

Judicial Review

- 2.7** The objector points out that there is a Leave Application in respect of a Judicial Review pending before the High Court of Justice in Northern Ireland which challenges the decision of the Council to Grant an Amusement Permit for Mavericks at 28 Shaftesbury Square. The leave application has been adjourned until 25th November, 2014.
- 2.8** The objector argues that the decision of the High Court in relation to this Judicial Review will have a material impact in terms of any decision to be reached by Belfast City Council Licensing Committee regarding this application. The objector, therefore, suggests that the application should be adjourned to allow the Leave Application and any Judicial Review to be determined prior to making a decision on this application for Botanic Bingo.
- 2.9** The Council will contest the Leave Application, on the grounds that the application does not meet the required standard of an arguable case and that the application was not made promptly or within the period permitted. Furthermore, if the objector wished the Council to desist from processing applications it believed might be affected by the outcome of a judicial review, it could have, and still could, apply to the Court for an order to prevent this. However it is likely that the objector would need to give an undertaking in damages in respect of any losses incurred by the applicant if the judicial review were unsuccessful.
- 2.10** In addition, Members should note that this application was lodged on 17th April 2014 and brought before the Committee in 18th June to obtain permission to set a special hearing. As this is a grant application, the business is not currently operating and any undue delay in determining the application will potentially prejudice the applicant's interests and may lead to the Council being challenged.

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Bingo Club Application

2.11 The objector states that an application for the grant of a Bingo Club Licence for the first floor of the premises was refused on 20th September, 2013 by District Judge Kelly. They contest that the first floor was proposed to hold over 80 gaming stations and that the second floor to which this application relates, could then provide for over another 300 machines.

2.12 The objector also states that the applicant lodged an Appeal against the decision on 27th September 2013 and, whilst they have not progressed the Appeal, they clearly intend to provide both Bingo and Gaming from the premises. The objector also highlights that, should both applications be successful, it would be impossible to police both areas due to the first and second floor having a shared entrance.

2.13 RESTRICTED CONTENT

(by virtue of Paragraphs 1 and 2 of the Council's policy on the publication of Committee reports)

2.14 RESTRICTED CONTENT

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Police Objection

2.15 The objector has included the PSNI correspondence for the Bingo Club Licence, which offered no objection. However, they nonetheless state that the PSNI continued to object in terms of the opening hours and number of gaming machines to be provided on the premise in connection with the second application which was refused by District Judge Kelly on 27th September 2013.

Locality and Suitability of the Premises and Compliance with Belfast City Council Amusement Permit Policy

2.16 The objector provides a report by Michael Burroughs Associates, which challenges the decision of the Council to grant an Amusement Permit for Mavericks, 28 Bradbury Place and that the decision to proceed with this application is neither reasonable nor proportionate and manifestly fails to provide their client with the right to a fair hearing.

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History of the Location

- 2.17** The objector has also highlighted that the premises, 25-41 Botanic Avenue have been the subject of a number of previous applications and have included a breakdown of the applications and associated correspondences with their submission.
- 2.18** In total, the objector's submission consists of the following:
- Floor Plans of the premise.
 - Observations report from Securway (NI) Limited
 - Case Officers Planning Report regarding the application for 22-23 Shaftesbury Square
 - PSNI representation regarding the Bingo Club Licence
 - Michael Burroughs Report
 - Decision of the County Court of 16th June 2003
 - Letters received by the Planning Service from community organisations regarding the Planning Application for the change of use from a theatre to an Amusement Arcade.

2.19 A copy of the objector's submission has been circulated to the Committee.

2.20 The objector and their legal representative will be in attendance to appear before and be heard by the Committee.

Applicant

2.21 The applicant has been informed of the objection and has been provided with a copy of the written representation. The applicant has also received a copy of the additional submission from the objector in support of their objection.

2.22 Both the applicant and objector were informed that their respective submissions would be shared in advance of your meeting.

2.23 The applicant has indicated that they have engaged Counsel and will not be submitting additional documentation in advance of your meeting.

2.24 A copy of the applicant's correspondence confirming this has been circulated to the Committee.

2.25 The applicant and their representatives have also confirmed that they will be in attendance to appear before and be heard by the Committee.

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PSNI

2.26 Members should note that whilst the objector has indicated that the PSNI 'had continued to object in terms of the opening hours and number of gaming machines to be provided on the premises in connection with the second application' that the PSNI has offered no objection to this application. In addition, they have provided the following information:

- 1.** They are not aware of any criminal convictions for the applicant. Mr Burns, a director for the company, has received two offences which indicate fines and two further entries located have an absolute discharge. All are over 20 years old.
- 2.** They are not in possession of complaints regarding the applicant to which statements have been recorded.
- 3.** Police have not been called to any incidents at 25-41 Botanic Avenue in regards to this applicant.
- 4.** They are not aware of an amusement permit application being made by the applicant for premises elsewhere before.

2.27 A copy of the PSNI correspondence has been circulated to the Committee.

Health, Safety, Welfare and Technical Requirements

2.28 The applicant has submitted a Building Regulations application for alterations required to the premises. Members should note that, if you are minded to grant the application, it must be upon condition that all works required to comply with the Amusement Permit technical requirements are completed to the satisfaction of the Service.

Planning Matters

2.29 An application was made to the Planning Service on 24th October 2013 for a change of use (second floor only) to an Amusement Arcade. The application was subsequently granted approval on 25th March 2014.

2.30 The applicant has confirmed that they would adhere to the hours of 9.00 am to 11.30 pm Monday to Saturday and 12.00 pm to 11.30 pm on Sundays, as granted by their Planning Permission.

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- 2.31 As part of the planning consultation process, Officers of the Environmental Protection Unit (EPU) and Building Control Service commented on the planning application.**
- 2.32 EPU recommended that certain informatives be attached should planning permission be granted. Members are advised that enforcement action cannot be taken should the applicant not comply with them.**
- 2.33 A copy of the planning approval has been circulated to the Committee.**
- 2.34 Members may recall that in an important Court of Appeal decision in June 1999 it was 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.**
- 2.35 The Court also confirmed that the Council can take into account matters such as location, structure, character and impact on neighbours and the surrounding area.**

Amusement Permit Policy

- 2.36 Members will be aware that an Amusement Permit Policy was ratified at Council on the 1st May 2013. It outlines those matters which may be taken into account in determining any application and indicates that each application must be assessed on its own merits.**

The key Policy objectives are to:-

- 1. Promote the retail vibrancy and regeneration of Belfast;**
- 2. Enhance the tourism and cultural appeal of Belfast by protecting its image and built heritage;**
- 3. Support and safeguard residential communities in Belfast;**
- 4. Protect children and vulnerable persons from being harmed or exploited by gambling;**
- 5. Respect the need to prevent gambling from being a source of crime and disorder.**

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2.37 There are five criteria set out in the Policy which should typically be considered when assessing the suitability of a location for an amusement arcade. These are detailed below as they relate to this application.

(a) Retail vibrancy and regeneration of Belfast:

2.38 The application premises are located outside the Retail Core of Belfast City Centre but within the limit of the City Centre, as defined in the Belfast Metropolitan Area Plan 2015 (BMAP). It is bordered on one side by the railway line and it is located above ground floor level. It therefore does not break up a continuous shopping frontage.

Complies with this criterion.

(b) Cumulative build-up of amusement arcades in a particular location:

2.39 There are no other amusement arcades on this commercial frontage.

Complies with this criterion.

(c) Impact on the image and profile of Belfast:

2.40 While the Arts Theatre once performed an important role in hosting plays and various acts in Northern Ireland it has remained vacant for some years now. The building is not listed and it has lawful development consent for use as a bingo hall and the incorporation of a slot machine area. Taking these considerations on board, the application premises are not considered a tourism asset. The site is also not considered as being a Gateway location into Belfast.

Complies with this criterion.

(d) Proximity to residential use:

(i) - predominantly residential in character

2.41 The application premises are located above ground floor level, along the commercial frontage of Botanic Avenue, where there are a mix of uses including restaurants, offices and retail units. There are residential buildings in the area on streets leading off Botanic Avenue.

The application premises are located in the City Centre but outside the Retail Core, and can therefore be viewed as a 'mixed use' area and not one that is predominantly residential in character.

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(ii) – non-residential property that is immediately adjacent to residential property

- 2.42 The nearest residential properties to the application premises are flats at 34 Botanic Avenue, which are approximately 19m from the application site on the opposite side of the road. These residential properties are facing the application premises, but are not immediately adjacent to it.
Complies with this criterion.

(e) Proximity to schools, youth centres, and residential institutions for vulnerable people:

- 2.43 There are no schools, youth centres, or residential institutions for vulnerable people within 200m of the application premises.
Complies with this criterion.

Conclusion

- 2.44 The application premise complies with all assessment criteria for the suitability of the location as laid down in Belfast City Council's Amusement Permit Policy.
- 2.45 In addition to the above legal requirements and assessment criteria, Members may take into account any matter which is deemed relevant. Members may also depart from the Policy where it is appropriate to do so, although it is envisaged that this should only happen in exceptional circumstances.

3 Resource Implications

Financial

- 3.1 None

Human Resources

- 3.2 None

Asset and Other Implications

- 3.3 None

4 Equality and Good Relations Considerations

- 4.1 There are no equality or good relations issues.

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5 Recommendations

5.1 The current policy, dictated by the governing Order is that the Committee, in considering the application, shall have regard to:

- a) The fitness of the applicant to hold a Permit having regard to his character, reputation and financial standing,**
- b) The fitness of any other person by whom the business to be carried on under the Permit would be managed, or for whose benefit that business would be carried on,**
- c) Representation, if any, from the sub-divisional commander of the Police Service of Northern Ireland in whose sub-division the premises are situated, and**
- d) Representation, if any, as a result of the public notices of advertisement.**

5.2 In addition, the Committee may also decide upon the suitability of the location for the proposed amusement arcade having regard to the five criteria set out in the Amusement Permit Policy, as ratified at council on the 1st May 2013, and discussed in paragraphs 2.38 to 2.47.

5.3 You are then required to make a decision based on the following options set out under the Order.

5.4 You must refuse the application unless satisfied that:

- a) The applicant is a fit person to hold an Amusement Permit; and**
- b) The applicant will not allow the business proposed to be carried on under the Amusement Permit to be managed by, or carried on for the benefit of, a person other than the applicant who would himself be refused the grant of an Amusement Permit.**

5.5 Thereafter:

- 1. You may refuse the application after hearing any representations from third parties, or**
- 2. You may grant the application, subject to the mandatory condition that the premises are not to be used for an unlawful purpose or as a resort of persons of known bad character, and**

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5.6 In the case of premises which have machines with the maximum cash prize of £25.00 where admission is restricted to persons aged 18 or over that:

- no persons under 18 are admitted to the premises; and**
- at any entrance to, and inside any such premises there are prominently displayed notices indicating that access to the premises is prohibited to persons aged under 18, and in addition.**

3. You may also grant the application subject to discretionary conditions outlined in the Order relating to the illumination of the premises, advertising of, and window displays on the premises and the display of information notices.

5.7 Should you be of a mind to refuse the application or grant the Permit subject to any discretionary conditions, you are required to advise the applicant of your intention to do so.

5.8 In this case, you must afford the applicant the opportunity to make representations at a specified Licensing Committee meeting on the matter before making a final determination of the application.

5.9 If, subsequent to hearing the applicant, you refuse the application or decide to grant the application subject to discretionary grounds, the applicant may appeal that decision to the County Court”

Mr. McCollum Q.C., Ms. Mairs and Mr. Trimble were again admitted to the meeting.

Mr. McCollum referred to the documentation which had been submitted on behalf of Oasis Retail Services Limited in response to the application, which focused firstly upon the issue of proliferation, which was the subject of the Judicial Review. He made the point that it was clear that the Committee had already decided to proceed with the application, despite the Judicial Review proceedings. His client's other objection concerned the fitness of the applicant to hold an Amusement Permit. He advised the Committee that the objections had been set out in full in writing and that he did not propose to repeat them.

The deputation thanked the Committee for receiving them and they left the meeting.

The Committee was advised that Dr. T. Quinn, Braniff Associates, who had assisted the Council in the development of its Amusement Permit Policy, was in

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attendance in order to address any issues arising from the application and he was welcomed to the meeting.

Dr. Quinn reminded the Members that the Council's Amusement Permit Policy had been drafted in order to provide clarity around the process for dealing with Amusement Permit applications. He provided a brief overview of the Policy and confirmed that, in his view, the application complied with the five assessment criteria regarding the suitability of the location, in terms of, for example, the premises being situated within the greater City Centre area, as defined within the Belfast Metropolitan Area Plan, not being a listed building or at a gateway location to the City and being situated at least two hundred metres from residential properties, schools and youth centres.

Mr. Beattie Q.C., together with Mrs. Colton and Mr. Foster, were again admitted to the meeting.

Mr. Beattie referred to the results of a credit check, which had been requested by the Building Control Service, which had revealed the presence of an outstanding debt against his client. He explained that Hazeldene Enterprises Limited, the applicant company, had not as yet commenced trading and that the debt was, in fact, an inter-company loan and did not involve any third party suppliers. His client had arrangements in place with two banks and, should the Committee be minded to grant the application, his client would, in advance of the arcade opening, submit references from them, together with information on the aforementioned loan, to the Council's Legal Services Section. He informed the Committee that Mr. Burns operated premises in a number of other council areas in Northern Ireland and that he had never been prosecuted for non-adherence to the legislation governing gaming. In terms of the refusal of the application for a Bingo Club Licence on the first floor of the premises in Botanic Avenue, he stressed that the ruling had related to the issue of locality and that the Court had made no finding regarding the fitness of his client. He pointed out that the report which had been obtained by the objector had not been produced until this Committee meeting was due to take place, despite the fact that there had been an intervening renewal application in respect of other premises.

Mr. Beattie explained that Mr. Foster had been working with officers of the Council and the Planning Service on matters relating to the premises. He confirmed that the bingo club and the amusement arcade would be accessed through separate foyers and that closed-circuit television would be in operation. Copies of the recordings could be made available to the Council, if requested. He added that expressions of interest had been sought from within the local area in relation to the recruitment of between twenty and twenty-five people to work in the arcade.

In response to a number of questions from the Members, Mr. Beattie confirmed that the amusement arcade would, if licensed, operate from 9.00 a.m. till 11.30 p.m. from Monday to Saturday and from 12.00 noon till 11.30 p. m. on a Sunday. In terms of any reduction in the number of gaming machines, he pointed out that the allocation of 227 machines had been based upon the available floor space and that it would be unlikely that all of the machines would be in use at any one time. He added that, whilst the Police Service of Northern Ireland had objected to the number of gaming machines

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stipulated within the application for the Bingo Club Licence, it had offered no objection in relation to that proposed within the amusement arcade. In relation to the delay in appealing the refusal of the Bingo Club Licence, Mr. Beattie explained that the appellant was seeking to have the matter considered at one sitting, rather than over a number of separate sittings, which had created difficulty in terms of identifying a suitable date. He stressed that, should that appeal fail, it would not impact upon his client's plans for the amusement arcade.

The Chairman thanked the deputation and they retired from the meeting.

During discussion, several Members voiced concern that, despite being invited by the Building Control Service to attend the meeting in order to provide details around any convictions or breaches relating to the applicant and being contacted on a number of occasions subsequently, the Police Service of Northern Ireland had failed to attend the meeting.

The Head of Building Control reminded the Committee that, at a recent meeting, it had agreed that a senior representative of the Police Service of Northern Ireland be invited to attend a future meeting in order to discuss issues around representations made by the Police Service in relation to licensing applications and confirmed that the matter was being progressed.

He drew the Committee's attention to the point which had been made by Mr. Beattie Q.C. regarding the enforcement of the Betting, Gaming, Lotteries and Amusements Order (Northern Ireland) Order 1985. He explained that, unlike other legislation relating to, for example, entertainments licensing and street trading, which were both administered and enforced by the Building Control Service, responsibility for enforcing the aforementioned Order rested with the Police Service of Northern Ireland. He added that there were limitations within the Order which created difficulties for the Police Service in that regard and suggested, in light of the increased powers being delegated to the Council as part of the Review of Public Administration, that it would be an opportune time to raise the matter with the Department of Justice.

After further discussion, it was

Moved by Councillor Attwood,
Seconded by Councillor Mullan,

That the Committee agrees, in its capacity as Licensing Authority, to grant an Amusement Permit in respect of Onassis Amusements, 25-41 Botanic Avenue, subject to the information to be submitted by the applicant to the Council's Legal Services Section confirming his financial standing, as outlined at the meeting by Mr. S. Beattie Q.C., and to the applicant adhering to the following conditions:

- (i) the premises are not to be used for an unlawful purpose or as a resort of persons of known bad character;

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- (ii) no persons under the age of 18 are admitted to the premises;
and
- (iii) at any entrance to, and inside the premises, there are prominently displayed notices indicating that access is prohibited to persons under the age of 18.

On a vote by show of hands nine Members voted for the proposal and three against and it was declared carried.

The Committee noted that, in accordance with the undertaking which had been provided at the meeting, the premises would operate from 9.00 a.m. till 11.30 p.m. from Monday to Saturday and from 12.00 noon till 11.30 p. m. on a Sunday.

The Committee granted approval for officers of the Building Control Service to raise with the Department of Justice the issue which had been highlighted in relation to the enforcement of the Betting, Gaming, Lotteries and Amusements Order (Northern Ireland) Order 1985.

Chairman