

Licensing Committee

Wednesday, 16th November, 2022

MEETING OF THE LICENSING COMMITTEE

HELD IN THE COUNCIL CHAMBER AND
REMOTELY VIA MICROSOFT TEAMS

Members present: Councillor Matt Collins (Chairperson); and
Councillors Canavan, Gormley, Howard,
M. Kelly, T. Kelly, Magee, McAteer, McCann,
McCoubrey, McCullough, McCusker, McKeown,
Murray, Nelson, Smyth and Thompson.

In attendance: Ms. K. Bentley, Director of Planning and Building Control;
Ms. N. Largey, Interim City Solicitor/Director of Legal and
Civic Services;
Mr. S. Hewitt, Building Control Manager;
Mr. K. Bloomfield, HMO Unit Manager;
Ms. U. McMullan, Solicitor;
Ms. L. Hillis, Principal Building Control Surveyor;
Ms. M. Gallagher, Senior Building Control Surveyor;
Mr. J. Cunningham, Senior Licensing Officer;
Mr. D. McCampbell, Lead Building Control Surveyor;
Ms. C. Reynolds, Director, City Regeneration and
Development
Ms. V. Smyth, Democratic Services Officer;
Mr. H. Downey, Democratic Services Officer; and
Ms. C. Donnelly, Democratic Services Officer.

Apologies

Apologies for inability to attend were reported on behalf of Alderman Sandford.

Minutes

The minutes of the meeting of 19th October were taken as read and signed as correct. It was reported that those minutes had been adopted by the Council at its meeting on 1st November, subject to the omission of those matters in respect of which the Council had delegated its powers to the Committee.

Declarations of Interest

Councillor McKeown declared an interest in the review of Pavement Café Licence for City Picnic, Fountain Street (item 2h) in that he had advocated on their behalf to find a resolution in correspondence to the Department for Infrastructure (DfI). He left the meeting while the matter was being discussed.

Councillor McCullough declared an interest in the Application for the Grant of a Seven-day Annual Outdoor Entertainments Licence for Grove Park, Jellicoe Avenue (Item 2d). He left the meeting while the matter was being discussed.

The Interim City Solicitor/Director of Legal Civic Services declared a conflict of interest in item 2(d) Application for the Renewal of a Seven-Day Annual Indoor Entertainments Licence – St. Malachy's College Old Boys' Association, 442 Antrim Road in that she knew one of the applicants. She left the meeting whilst the matter was being discussed.

Delegated Matters

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

HMO Licences Issued Under Delegated Authority

The Committee noted a list of licences for Houses in Multiple Occupation which had, since its last meeting, been issued under the Council's Scheme of Delegation.

Application for a New Licence to operate a House of Multiple Occupation - 30 Eblana Street

The HMO Unit Manager submitted for the Committee's consideration an application for a Licence permitting the use of premises as a House in Multiple Occupation (HMO).

“1.0 Purpose of Report/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).

Premises	Application No.	Applicant(s)	Managing Agents
30 Eblana Street, Belfast, BT7 1LD	9399	Mr Enda Hughes	Boyle Properties

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.

Background

1.2 An individual purporting to be the owner of the accommodation submitted an HMO licence application on 22nd August, 2019 and an HMO licence was granted to that individual on 30th December, 2019.

1.3 However, following an application to vary the managing agent of the property, officers established that the individual to

whom the licence was granted was not, in fact, the legal owner of the property. Instead, he was one of two directors of a limited company who actually owned the property. Members will be aware that a limited company is a separate legal entity.

- 1.4 Officers sought and obtained advice from Counsel on the validity of the licence and legal services advised that section 8(1) of the 2016 Act clearly requires that the *owner* of the accommodation must apply for a licence, which was not the case here. Therefore, officers held that the misrepresentations made by the abovementioned individual regarding the ownership of the property, invalidated the licence meaning it no longer had effect. The NIHMO Unit emailed the individual advising him of the Council's decision on 26th July, 2022.
- 1.5 On 23rd June 2022, the applicant, Mr. Hughes, submitted an application for a new HMO licence (He was a prospective purchaser of the property at the time).
- 1.6 The sale of the property was completed on 28th July, 2022.
- 1.7 Therefore, given that there was no valid licence in place when the applicant's purchase of the property completed, the applicant could not avail of section 28 of the 2016 Act.
- 1.8 Had the licence remained in effect and, whilst still being an application for a new licence, with overprovision being taken into account (as indeed it must be), the Council would not have deemed granting this application to result in overprovision, given that it would effectively have been a transfer of an existing licence.
- 2.0 Recommendations
- 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.
- 2.2 If the application is refused, the applicants have a right of appeal to the County Court. Such an appeal must be lodged within 28 days of formal notification of the decision.

3.0 Main Report

Key Issues

3.1 Pursuant to the 2016 Act, the Council may only grant a licence if it is satisfied that:

- 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:
 - (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.****

Planning

3.2 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 in May, 2022 with the planning reference LA04/2022/0558/LDE.

Fitness

3.3 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.

3.4 The NIHMO Unit has consulted with the following units within the Council's City and Neighbourhood Services Department –

- (a) Environmental Protection Unit ('EPU') – it has 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') – it has 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') – it has 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,
- (d) Enforcement Unit ('EU') – it has 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,

3.5 The applicant and Managing Agent have confirmed that they have not been convicted of any relevant offences as set out at paragraph 3.3 of this report.

3.6 The applicant or Managing Agent have 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 recently arisen, PSNI has not been accepting or responding to notification of these applications. Officers are continuing to engage with PSNI to find a resolution to this issue.

Overprovision

3.7 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 (HMO's) Subject Plan for Belfast City Council Area 2015'.

3.8 Legal Services has advised that there is a clear requirement in section 8 of the 2016 Act for the Council to be satisfied that the granting of a licence will not result in overprovision.

- 3.9 On the date of assessment, 17th October 2022, there were a total of 1087 licensed HMOs in HMO policy area 'HMO 2/22 Botanic, Holylands, Rugby'. This equates to just over 45% 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 1087 licensed HMOs have a capacity of 4897 persons
- 3.10 The total number of dwelling units in a Policy Area is measured by Ordnance Survey's Pointer database.
- 3.11 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.
- 3.12 The Council recognises that there is a need for intensive forms of housing and to meet this need, 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.
- 3.13 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.'
- 3.14 On 28th October 2022, out of 19 premises available for rent within the BT7 area on the website PropertyNews.com there was 1 licensed HMO, which from the information presented on the website, represented 4 bed spaces. The HMO was available for immediate occupation. It should be borne in mind that the peak letting time for HMO accommodation in BT7 is before the commencement of the academic year.
- 3.15 Anecdotal evidence from conversations with HMO managing agents suggest that there is currently a lack of HMO accommodation available in the locality.
- 3.16 The fact 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.

- 3.17 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.
- 3.18 Officers are, therefore, of the opinion that it is too early to tell whether there is a temporary lack of HMO accommodation in the locality or evidence of an emerging long-term supply issue.

Objections

- 3.19 No objections have been received in relation to this application.

Attendance

- 3.20 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

- 3.21 The accommodation was certified as complying with the physical standards for an HMO by a technical officer from the NIHMO service on 31st October, 2022

Notice of Proposed Decision

- 3.22 On 28th October 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 2)
- 3.24 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.

Manager's Query further to the Notice of Proposed Decision

- 3.25 On 1st October 2022, Boyle Properties emailed the HMO unit seeking clarity as to why the application was not being considered as a renewal. (Appendix 3).

Officers responded to the query on the same day (Appendix 4)

Financial and Resource Implications

- 3.26 None. The cost of assessing the application and officer inspections are provided for within existing budgets.**

Equality and Good Relations Implications

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

It was reported that Mr. Hughes, the applicant, Mr. D. Boyle, the Managing Agent and Mr. E. Sloan, the applicant’s legal representative were in attendance and they were welcomed by the Chairperson.

Mr. Sloan made a representation on behalf of the applicant and stated that they understood and respected the legislative and policy basis which underpinned the HMO Licensing Scheme, and it was Mr. Hughes’ intention and hope to be a responsible and compliant landlord. Mr Sloan informed the Committee that Mr Hughes had agreed to purchase the property at the cost of £185,000 in February 2022 in the knowledge that there was an existing HMO licence in place and intended to continue it and had engaged in significant borrowing for the project. He added that his client had engaged in full due diligence and inspected the existing HMO licence which had been granted in 2019 for a 5-year period until 2024. Mr. Sloan explained that Mr. Hughes understood that the licence did not pass with the property but he had been fastidious in his approach and instructed Mr. Boyle, Managing Agent to assist him with the licence. Mr. Sloan referred to Section 28 and stated that Mr. Hughes followed the correct procedures in relation to the licence application and planning requirements. Mr. Sloan added that procedurally, it was a compliant application and Mr. Hughes was a suitable applicant. He continued that as the report confirmed, the property was deemed suitable after inspection and there had been no objections. Mr. Sloan advised the Committee that Mr. Hughes applied for the licence to be transferred to him on 23rd June and provided a timeline and details of correspondence with the Council which had led Mr. Hughes to have a legitimate expectation that the application would proceed. He added, that at no time were any issues raised nor was there an interrogation of the previous licence.

Mr. Sloan stated that there may be a degree of procedural unfairness which he did not want to labour upon but highlighted a technicality in the report in relation to the previous licence and its invalidation. Mr. Sloan reported that he had looked at the Land Registry details which had uncovered inconsistencies in relation to the property’s previous owner and licence whereby essentially there was a wrong factual basis for unilateral declaration that the licence was invalid. In this regard, he stated he did not want to pursue the technicalities further as it would be disproportionate. Mr. Sloan asked that Mr. Hughes be treated as a compliant and suitable applicant for a new licence and requested a continuation of the status quo in relation to the licence to enable Mr. Hughes to continue to provide housing provision in a responsible manner.

A Member thanked Mr. Sloan for his detailed representation and that of the Officers and expressed confusion whereby it had appeared that Mr. Sloan had made representations on behalf of the previous owner which would change the conversation in relation to the Committee's decision and asked for further clarification. Mr. Sloan replied that if the previous licence had been valid as it had appeared to be for 5 years with 2 years to run; and had the application been submitted prior to completing the purchase it would have been treated as a deemed transfer even though it was an application for a new licence. He concluded that the issue was that the Council had decided it would not be treated as such as the previous licence was invalid due to a misrepresentation made by the previous owner to which he added was not correct from a factual basis.

The HMO Manager responded to the points made by Mr. Sloan. and set out the process and Council engagement which had taken place with the previous owner. He reported that the previous owner and respective managing agent had been aware of the Council's concerns in relation to the validity of the licence.

A Member acknowledged the diligence with which the HMO Manager and Officers conduct the work carried out and their in-depth policy knowledge. Another Member raised the matter of rebalancing communities like Holylands, Stranmillis and Lisburn Road and stopping the culture of purchasing a property with a HMO licence as long as it was applied for before the property purchase was completed.

The Interim City Solicitor/Director of Legal and Civic Services referred to the Subject Plan as only one of a number of considerations which needed to be taken into account. She added that it was an appropriate starting place and the legislation required the Members to look at the issue of need.

Moved by Councillor McCann,
Seconded by Councillor Murray,

That the Committee refuse the application for a new licence to operate a House of Multiple Occupation on the basis that to do so would result in overprovision.

The Committee agreed to refuse the application.

Applications approved under Delegated Authority

The Committee noted a list of applications for licences which had, since its last meeting, been approved under the Council's Scheme of Delegation.

Application for the Grant of a Seven-day Annual Outdoor Entertainments Licence - Grove Park, Jellicoe Avenue

The Building Control Manager submitted for the Committee's consideration the following report:

“1.0 Purpose of Report/Summary of Main Issues

- 1.1 To consider an application for the grant of a Seven-day annual Outdoor Entertainments Licence in respect of Grove Park.

Area and Location	Ref. No.	Applicant
Grove Park Jellicoe Avenue Belfast, BT15 3FZ	WK/2022/00480	Mr David Sales City and Neighbourhoods Services Department Belfast City Council

- 1.2 A location map is attached at Appendix 1.

2.0 Recommendations

- 2.1 Taking into account the information presented and any representations received Members are required to consider the application and to:

- a) approve the application for the grant of the Seven-Day Annual Outdoor Entertainments Licence, or
- b) approve the application for the grant with special conditions, or
- c) refuse the application for the grant of the Seven-Day Annual Outdoor Entertainments Licence.

- 2.2 If an application is refused, or special conditions are attached to the licence to which the applicant does not consent, then the applicant may appeal the Council’s decision within 21 days of notification of that decision to the County Court. In the case that the applicant subsequently decides to appeal, entertainment may not be provided until any such appeal is determined.

3.0 Main Report

Key Issues

- 3.1 Grove Playing Fields are owned by Belfast City Council and were previously licensed to provide outdoor entertainment until the Licence expired in August 2015.

- 3.2 A site plan for Grove Playing Fields is attached at Appendix 2.

- 3.3 Members are advised that, at a meeting of the Licensing Committee on 19th June 2022, you agreed to grant delegated authority to the Chief Executive, to approve the application

for the Grant of a Seven-day Annual Outdoor Entertainments Licence for Grove Park, for the events on 8th to 10th July only, subject to having been satisfied that all safety and management procedures were in place and consultation had been undertaken with the PSNI and NIFRS.

- 3.4 The licence was subsequently issued for the Dockside Festival on 8-10th July 2022. Outdoor music events were held on 8th July and 10th July and a family fun day was held on 9th July.
- 3.5 This application is being brought back for further consideration to determine if Committee is now minded to grant a licence without restriction on its days of use.

Application and representations

- 3.6 As for all licences associated with the Council's parks, the applicant is the Director of City and Neighbourhood Services.
- 3.7 The standard days and hours for an Outdoor Entertainments Licence are:
- d) Monday to Sunday: 11.30 am to 11.00 pm.
- 3.8 In addition, Special Conditions are attached to Outdoor Entertainments Licences related to setting limits on maximum numbers and implementing a robust system of dealing with complaints.

Representations

- 3.9 Public notice of the application has been placed and no written representation has been lodged as a result of the advertisement.

PSNI

- 3.10 The Police Service of Northern Ireland has been consulted and has confirmed that it has no objection to the application.
- 3.11 A copy of its correspondence is attached at Appendix 3.

NIFRS

- 3.12 The Northern Ireland Fire and Rescue Service has been consulted in relation to the application and has confirmed that it has no objection to the application.

Health, Safety and Welfare

- 3.13 Officers from the Service will engage with the applicant and event organisers in the lead up to future events to ensure all documentation and technical information is in place.
- 3.14 Additionally, officers will inspect the site during the build of the event space and following its completion to ensure they are satisfied all safety and management procedures are in place.

Noise

- 3.15 The applicant will be required to provide a Noise Management Plan for future events which will be provided to the Environmental Protection Unit (EPU) for evaluation. Council Officers work with the promoter in order to assess the noise that may be generated from the event and to minimise the potential for noise disturbance.
- 3.16 Members will also recognise that noise generated by outdoor concerts is likely to lead to some level of disturbance for local residents. Even if guideline levels are met there is no guarantee that complaints will not be received. Conversely, if a recommended level is exceeded this may not necessarily lead to complaints as people may be prepared to tolerate the event because it will only last for a limited period of time.
- 3.17 9 noise complaints were received as a result of the dance music event held on 10th July 2022. As a result of these complaints, the Night Time Noise Team carried out noise tests in the vicinity of three of the complainants dwellings. The three noise readings indicated that the noise level was within acceptable limits.

Applicant

- 3.18 The applicant, and/or their representatives, will be available at your meeting to answer any queries you may have in relation to the application.

Financial and Resource Implications

- 3.19 None.

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

- 3.20 There are no issues associated with this report.”

The Committee approved the application for the grant of the 7-Day Annual Outdoor Entertainments Licence.

Application for the Variation of a Seven-Day Annual Indoor Entertainments Licence - Town Square, 12-13 Lower Crescent

The Building Control Manager submitted for the Committee's consideration the following report:

- “1.1 To consider an application for the variation of a Seven-Day Annual Indoor Entertainments Licence for the hours during which entertainment may be provided at Town Square, based on the Council's Standard Conditions to provide music, singing, dancing or any other entertainment of a like kind.**

Area and Location	Ref. No.	Applicant
Town Square 12-13 Lower Crescent Belfast BT7 1NR	WK/202200841	Victoria 1 Limited c/o 12-13 Lower Crescent Belfast BT7 1NR

- 1.2 A location map is attached at Appendix 1.

2.0 Recommendations

- 2.1 Taking into account the information presented and any representations received Members are required to consider the application and to:

- a) approve the application for the variation of the Seven-Day Annual Indoor Entertainments Licence for permission to provide entertainment to 2.00 am, or
- b) Approve the application for the variation with special conditions, or
- c) Refuse the application for the variation of the Seven-Day Annual Indoor Entertainments Licence for permission to provide entertainment to 2.00 am.

- 2.2 If an application is refused, or special conditions are attached to the licence to which the applicant does not consent, then the applicant may appeal the Council's decision within 21 days of notification of that decision to the County Court. In the case that the applicant subsequently decides to appeal, entertainment may not be provided to the later hours until any such appeal is determined.

3.0 Main Report

Key Issues

3.1 The areas currently licensed to provide indoor entertainment and their maximum occupancies are:

- Town Square Bar – 180 persons
- Town Square Cafe – 160 persons

3.2 The days and hours during which entertainment may be provided under the terms of the indoor Entertainments Licence are:

- Monday to Saturday: 11.30 am to 1.00 am the following morning,
- Sunday: 12.30 pm to 1.00 am the following morning.

3.3 The variation application relates to a proposed extension to the hours during which entertainment can be provided on Friday and Saturday to 2.00 am the following morning.

3.4 Members are reminded that applications to provide indoor entertainment beyond 1.00 am subject to consideration by the Committee.

3.5 The applicant has stated that the extension of hours to 2.00am is to allow more flexibility to provide late night music entertainment and this will be used in conjunction with the Article 44a extension to Liquor Licensing hours.

Representations

3.6 Public notice of the application has been placed and no written representation has been lodged as a result of the advertisement.

PSNI

3.7 The Police Service of Northern Ireland has been consulted and has confirmed that it has no objection to the application.

3.8 A copy of its correspondence is attached at Appendix 2.

NIFRS

3.9 The Northern Ireland Fire and Rescue Service has been consulted in relation to the application and has confirmed that it has no objection to the application.

Health, Safety and Welfare

- 3.10 An inspection has been carried out on the premises within the past 12 months and officers from the Service are satisfied with all safety measures and management procedures.

Noise

- 3.11 One noise complaint has been received in relation to the premises in the last 12-month period. The Night-Time Noise Team visited the area and witnessed no noise whilst outside the complainant's property.
- 3.12 Members are reminded that the Clean Neighbourhood and Environment Act 2011 gives the council additional powers in relation to the control of entertainment noise after 11.00 pm.

Applicant

- 3.13 The applicant, and/or their representatives, will be available at your meeting to answer any queries you may have in relation to the application.

Financial and Resource Implications

- 3.14 None.

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

- 3.15 There are no issues associated with this report.”

The Committee approved the application for the Variation of a 7-day Annual Indoor Entertainments Licence.

**Application for the Renewal of a Seven-Day Annual Indoor
Entertainments Licence - St. Malachy's College Old Boys'
Association, 442 Antrim Road**

The Building Control Manager submitted for the Committee's consideration the following report.

“1.0 Purpose of Report/Summary of Main Issues

- 1.1 To consider an objection to the application for the renewal of the Seven-Day Annual Indoor Entertainments Licence for St. Malachy's College Old Boys' Association.

- 1.2 At the meeting on 19th October, the Committee agreed to defer consideration of this report due to a declaration of interest by the Interim City Solicitor/Director of Legal Civic Services.

Area and Location	Ref. No.	Applicant
St. Malachy's College Old Boys' Association 442, Antrim Road Belfast BT15 5BG	WK/2020/02479	Mr. Conor Cassidy Club Chairman

- 1.3 A location map is attached at Appendix 1.

2.0 Recommendations

- 2.1 Taking into account the information presented and any representations made in respect of the application you are required to make a decision to either:

- a) approve the application for the renewal of the 7-Day Annual Indoor Entertainments Licence, or
- b) approve the application for the renewal with special conditions, or
- c) refuse the application for the renewal of the 7-Day Annual indoor Entertainments Licence.

- 2.2 If an application is refused, or special conditions are attached to the licence to which the applicant does not consent, then the applicant may appeal the Council's decision within 21 days of notification of that decision to the County Court.

- 2.3 Should the applicant decide to appeal, the existing Licence will continue with its present conditions until the appeal is determined.

3.0 Main Report

Details of the Premises

- 3.1 St. Malachy's Old Boys' Association has held a Seven-Day Annual Indoor Entertainment Licence since 1998.

- 3.2 The current days and hours during which entertainment can be provided are:

- Monday to Saturday: 11.30 am to 11.00 pm and
- Sunday: 12.30 pm to 11.00 pm

- 3.3 Under the provisions of the Licensing and Registration of Clubs (Amendment Act) (Northern Ireland) 2021, in addition to the normal hours shown above, the club may apply for up to 104 extensions a year to sell alcohol until 01.00 am on any day of the week. These are authorised at the discretion of the Police Service of Northern Ireland (PSNI) and, if granted, these also enable entertainment to be provided to the end of the drinking up period on those nights. The drinking up period extends to 2.00 am on those nights that an extension licence has been approved by the PSNI.
- 3.4 The areas currently Licensed to provide indoor entertainment and their occupancies are the:
- Ground Floor lounge bar with a maximum capacity of 45 people
 - Ground Floor Main Function Hall with a maximum capacity of 200 people
 - Ground Floor Darts room with a maximum capacity of 38 people
 - First Floor Recreation room with a maximum capacity of 50 people.
- 3.5 The Function Hall is used on an adhoc basis for family parties and charity functions which usually involve a late licence to 1:00am with music provided by a DJ operating via their noise limiting device.
- 3.6 The Club has advised that it has not had entertainment scheduled since before Covid-19.

Licensing History

- 3.7 An application for an Entertainments Licence for this premises was first received in 1997, and, while objections were received for the initial grant and first renewal, the licence was renewed under delegated authority, with no objections having been received, for the years 2000-2008.
- 3.8 In March 2009, an objection to the renewal of the licence was received by the Service. This objection was resolved through a resident meeting with the Club and with special conditions being added to the licence following a special meeting of the Licensing Committee on 29th April 2009. The licence subsequently has been renewed under delegated authority with no objections received on each subsequent year until the present.
- 3.9 At the Licensing Committee in April 2009, the Club agreed to the following special conditions being attached to its licence:

- Bottle bins to be moved to a location away from the wall adjacent to residential property.
- Fire doors at the rear of the function room to be used only in emergency situations and not to be used at any other time.
- Smoking area restricted to that part of the alleyway immediately adjacent to the premises.
- Patrons discouraged from using the rear yard immediately adjacent to residential property.
- Regular meetings be established between the club committee and officers from the Service in order to deal with any problems which might arise in respect of the licence.

Representations

Objector's Representation

- 3.10 One written representation was received as a result of the public notices of application from a local resident. This was received within the 28-day statutory period.
- 3.11 The letter of objection is attached at Appendix 2.
- 3.12 The objector submitted video clips on two memory sticks to support their objection. The video clips were dated from 2nd July, 2021 to 27th May, 2022. The issues arising from these videos relate to:
- Patron conversations in the rear garden
 - Beer bottle delivery and collections causing noise
 - Damage to wall at objector's property alleged to be from beer bottle collections
 - Patrons at rear garden of premises calling objector's name as she videos.
- 3.13 The Building Control Service sent a letter offering to facilitate a meeting between the objector and applicant, but this offer was not accepted. The Service also offered to meet with the objector independently, but this too has not been accepted.
- 3.14 The objector's Representation Form is attached as Appendix 3 and it has been provided to the applicant, as required by the protocol.
- 3.15 In general, the representation relates to concerns as follows:
- noise nuisance and abusive behaviour from patrons gathering at the rear of the premises
 - nuisance caused by beer deliveries and collections

- failure to comply with conditions attached to the entertainment licence.

3.16 The objector has been invited to attend your meeting to discuss any matters relating to the objections should they arise.

Applicant's Representation

3.17 The applicant has provided their Representation Form, as required by the Protocol, and a copy of their response along with letters of support is attached as Appendix 4.

3.18 The applicants Representation Form has also been provided to the objector, as required by the protocol.

3.19 A summary of the applicant's representation is as follows:

- They have not been made aware of any complaints about the club and had they been aware of any problems they would have investigated these with a view to taking any reasonable steps to address them.
- They have had no complaints raised with them by either the PSNI or the Council's noise team.
- They are open to discussion on any steps they can take to address the objector's concerns.
- Other residents in the area are supportive of the club and have no complaints.

3.20 The applicant and/or their representatives will be available at your meeting to answer any queries you may have in relation to the application.

Counter Representations

3.21 No counter representations have been received at the time of writing this report. A copy of the report has been provided to the applicant and objector and a verbal update will be provided in respect of any further representations which are received.

PSNI

3.22 The Police Service of Northern Ireland has been consulted and confirmed that it has no objection to the application. A copy of its correspondence is attached at Appendix 5.

NIFRS

- 3.23 The Northern Ireland Fire and Rescue Service has been consulted and has confirmed that it has no objection to the application.

Health, Safety and Welfare

- 3.24 There are no issues relating to health, safety and welfare in relation to this renewal application.

Noise and Complaints

- 3.25 There have been no complaints communicated to the Environmental Protection Unit's night-time noise team and the Service has no record of any other complaints concerning the premises in the past 12 months.

4.0 **Financial and Resource Implications**

- 4.1 None.

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

- 5.1 There are no issues associated with this report."

The Building Control Manager reminded the Committee that the application had been deferred at the previous Licensing Committee on 19th October due to a conflict of interest declared by the Interim City Solicitor/Director of Legal and Civic Services.

It was reported that Mr. Shields, the applicant, and Ms. J. Mallon the objector were in attendance and they were welcomed by the Chairperson. The public broadcast was stopped and the Members were shown footage which had been provided by the objector.

The Chairperson invited Ms. J. Mallon, the objector to make her representation.

Ms. Mallon thanked the Committee for hearing her objection to the application and referred to the footage and the behaviour contained therein. She stated that the applicant St Malachy's College Old Boys' Association had been developing a beer garden beside her home without consultation with local residents. She described how she could hear the applicant's patrons from inside her house which she found intolerable. Ms. Mallon described to the Committee how she had been subjected to abusive behaviour and felt intimidated in her home. She asked the Committee why the applicant could serve drink in the beer garden when it was not mentioned on the licence application and accused the applicant of ignoring licence conditions. She stated the situation was intolerable and it was affecting her health. She thanked the Committee.

A Member asked Ms. Mallon if there was any disturbance at night given that the footage presented was in daylight. Ms. Mallon responded that the footage provided was taken in the evening during summer months.

The Chairperson welcomed Mr. P. Shields, the applicant, and invited him to make his representation in response to the footage.

Mr. Shields addressed each of the individual video clips which had been viewed by Committee and referred to the clips which showed footage of deliveries and that of glass disposal. He stated that he was not clear why these had anything to do with the Entertainment Licence and why they were under consideration. He provided timings of the deliveries and stated that none of the 3 other neighbours in Kenbella Parade had an issue with the deliveries which took as long as the weekly refuse collections. Mr. Shields said that it was worth noting, that there was no line of sight from the premises to Kenbella Parade as there was an 8 foot-high fence that prevented it. He added that he would welcome discussion about any abusive behaviour that may have taken place and disciplinary action would be taken. He referred to the instances of the back door to the club being opened without the permission of the staff which would be investigated. Mr. Shields pointed out that the incidents presented in the footage were taken in daylight when no specific entertainment was taking place and no bar staff were in the back hall. He informed the Committee that additional fire door signage and potential fire door alarms were being investigated. With regards, to noise he advised that no noise issues had ever been ever reported to the Council or the PSNI.

Mr. Shields responded to the damage to Ms. Mallon's wall which had never been formally reported. He stated that had it been reported at the time and had the club been responsible it would have rectified the matter without question. Mr. Shields remarked that he would be content to have a face-to-face meeting with Ms. Mallon to discuss the matter further. To mitigate the possibility of any future issues, Mr. Shields informed the Committee that the club proposed to erect a no parking sign against its rear gates which would give clearer access to the delivery lorry during weekly deliveries. Mr. Shields advised that St. Malachy's Old Boys Association would be available at any time to speak to Council Officers or any of the neighbours however, unfortunately Ms. Mallon had refused to meet with them.

A Member referred to the conditions outlined below which had been attached to the previous licence and asked if they would be attached upon renewal of the licence. The Building Control Manager confirmed the conditions would be on the licence renewal unless Committee decided otherwise.

- 1. Bottle bins to be moved to a location away from the wall adjacent to residential property.**
- 2. Fire doors at the rear of the function room to be used only in emergency situations and not to be used at any other time.**
- 3. Smoking area restricted to that part of the alleyway immediately adjacent to the premises.**
- 4. Patrons discouraged from using the rear yard immediately adjacent to residential property.**

5. **Regular meetings be established between the club committee and officers from the Service in order to deal with any problems which might arise in respect of the licence.**

The Building Control Manager raised the matter of the beer garden which had been raised by Ms. Mallon and confirmed that the Entertainments Licence did not cover the beer garden and that the provision of alcohol in the area would be a matter falling under the club's Liquor Licence.

Ms. Mallon advised that 2 residents in the Kenbella Parade were members of St. Malachy's Old Boy's Association and it would be unlikely that they would raise any complaints.

The Chairman encouraged dialogue between the parties to resolve matters and stated that the Council would be content to facilitate such meetings.

The Committee approved the application for the renewal of a 7-day Annual Indoor Entertainments Licence with all existing conditions to remain.

**Application for the Renewal and Variation
of a Seven-Day Annual Indoor Entertainments
Licence - Common Market, 16-20 Dunbar Street**

The Building Control Manager submitted for the Committee's consideration the following report:

- “1.1 **To consider an application for the renewal and variation of a Seven-Day Annual Indoor Entertainments Licence for Common Market, based on the Council's Standard Conditions to provide music, singing, dancing or any other entertainment of a like kind.**

1.2

Premises and Location	Ref. No.	Applicant
Common Market 16-20 Dunbar Street Belfast, BT1 2LH	WK/2022/0950	Ms Alana Fox Carlisle Inns Limited 2-14 Dunbar Street Belfast, BT1 2LH

- 1.3 **A location map is attached at Appendix 1.**

2.0 **Recommendations**

- 2.1 **Taking into account the information presented and any representations received Members are required to consider the application and to:**

- a) approve the application for the renewal of the 7-Day Annual Indoor Entertainments Licence; and
- b) approve the application for the variation of the 7-Day Annual Indoor Entertainments Licence for permission to provide entertainment to 3.00am; and / or
- c) approve the application for the variation of the 7-Day Annual Indoor Entertainments Licence to increase the occupancy on the ground floor to 1200 persons, or
- d) approve the application for the variation of the Licence with special conditions, or
- e) refuse any or all of the applications.

2.2 If an application is refused, or special conditions are attached to the licence to which the applicant does not consent, then the applicant may appeal the Council's decision within 21 days of notification of that decision to the County Court. In the case that the applicant subsequently decides to appeal, entertainment may not be provided to the later hours and the increase in occupancy will not be permitted until any such appeal is determined.

3.0 Main Report

Key Issues

Details of the Premises

- 3.1 The applicant, Ms. Alana Fox of Carlisle Inns Ltd., has applied for the renewal and variation of a Seven-Day Annual Indoor Entertainments Licence based on the Council's standard conditions to provide indoor music, singing, dancing or any other entertainment of a like kind.
- 3.2 Common Market is in the former Arnott's Fruit Market building and Ms. Fox is also the licensee for the building adjacent to Common Market known as 39 Gordon Street and Lux and situated at 2-16 Dunbar Street.
- 3.3 Mr. Lawrence Bannon, who is consultant and advisor to Carlisle Inns Ltd., has been liaising directly with the Service in relation to the application.
- 3.4 The areas currently licensed to provide indoor entertainment and their maximum occupancies are:
 - Main Area (Ground Floor), with a maximum capacity of 290 persons
 - Mezzanine Floor, with a maximum capacity of 60 persons

- 3.5 The nature of the variation is to increase the occupancy of the Main Area of the ground floor to approximately 1260 persons.
- 3.6 Although the venue can potentially accommodate approximately 1260 persons, due to limited exit capacity, when the licence was first granted the ground floor area was laid out as a seated area with large picnic tables and the occupancy was restricted to 290 persons.
- 3.7 Floor plans showing the layout of the premises are attached at Appendix 2.
- 3.8 The licensee plans to remove the picnic tables when events are to be held, therefore allowing for a significant increase in the occupancy capacity and Mr Bannon is currently negotiating with the Council to acquire permission for an additional emergency exit through the Council Depot on Dunbar Street, which would accommodate the increase in capacity.
- 3.9 If the Committee is minded to grant the variation to increase the occupancy capacity, it is advised that approval be on the basis that the extra numbers would not be permitted until an agreement is finalised between the Council and the licensee for the use and management of an additional emergency exit which passes through the adjacent Council depot.
- 3.10 The days and hours during which entertainment may be provided under the terms of the indoor Entertainments Licence are:
- Monday to Saturday: 12.00 p.m. to 1.00 a.m.
 - the following morning, and
 - Sunday: 12.00 p.m. to 12.00 a.m.
- 3.11 The variation application also relates to a proposed extension to the hours during which entertainment can be provided on Monday to Sunday to 3.00 a.m. the following morning.
- 3.12 Members are reminded that applications to provide indoor entertainment beyond 1.00 a.m. are subject to consideration by Committee.
- 3.13 The applicant has stated that the extension of hours to 3.00 am is needed to compete with other City centre venues. The applicant's existing premises, 39 Gordon Street and Lux, which adjoins this venue currently holds a 3.00 am entertainments licence and this increase in operating hours would allow both venues to operate in harmony, allow the licensee to manage crowd control better and improve their safety management protocols.

Representations

- 3.14 Public notice of the application has been placed and no written representation has been lodged as a result of the advertisement.

PSNI

- 3.15 The PSNI has been consulted and has confirmed that it has no objection to the application.
- 3.16 A copy of its correspondence is attached at Appendix 3.

NIFRS

- 3.17 The Northern Ireland Fire and Rescue Service has been consulted in relation to the application and has confirmed that it has no objection to the application.

Health, Safety and Welfare Inspections

- 3.18 This building was previously used by Arnott's for fruit and vegetable storage. The use of the building changed in 2021 to an assembly building and a Building Regulations completion certificate for the works was issued by the Service.
- 3.19 A during performance inspection was carried out on the premises by officers from the Service on 3rd October 2022. On this occasion, the licensee was operating his two premises as one 'super-club'. The two premises Common Market and 39 Gordon Street are adjoined. 39 Gordon Street operates as a bar on the ground floor and a nightclub on the first floor. This inspection revealed some operational issues. The management was made aware of these issues and they advised that additional staff training and management procedures would be put in place prior to operating the venue in this manner in the future.
- 3.20 The licensee has confirmed that the proposed increase in occupancy will be implemented incrementally to ensure that adequate management procedures are developed.
- 3.21 The licensee has submitted a management plan for the premises and Officers from the service are liaising with the licensee to ensure that technical requirements and associated operational and management procedures are satisfactory.

- 3.22 The premises will continue to be inspected as part of our During Performance Inspection regime and will be subject to further monitoring to ensure the applicant adheres to their licence conditions.

Noise Issues

- 3.23 An acoustic report was submitted to the Environmental Protection Unit prior to this Licence being granted in October, 2021. At this time, a noise limiting device was fitted and set at 90dB LAeq,t. The licensee has advised that all music will be played through the existing noise limiting device.
- 3.24 The Environmental Protection Unit (EPU) has been consulted in relation to the application and confirmed that it has received three noise complaints in the past 12 months. These complaints were received on 26th September, 5th October and 2nd November 2022.
- 3.25 The licensee has recently carried out some works to improve the acoustic performance of the building, which includes forming an internal lobby and acoustic curtain to reduce the noise emanating through the large roller shutter door to the front of the premises.
- 3.26 Members are reminded that the Clean Neighbourhood and Environment Act 2011 gives the Council additional powers in relation to the control of entertainment noise after 11.00 pm.

4.0 Financial and Resource Implications

- 4.1 None.

**5.0 Equality and Good Relations Implications/
Rural Needs Assessment**

- 5.1 **There are no issues associated with this report.”**

Moved by Councillor Magee; and
Seconded by Councillor Bradley,

That the Committee approve the application for the Renewal and Variation of the 7-Day Annual Indoor Entertainments Licence on the basis that variation in relation to the increase in occupancy capacity would not be permitted until such times as a satisfactory agreement is in place between the Council and the licensee for the use and management of the additional emergency exit which passes through the adjacent Council depot.

The Committee agreed to the proposal.

**Review of Pavement Café Licence –
City Picnic, Fountain Street**

The Building Control Manager provided an overview of the review of the Pavement Café Licence and requested that the Members consider representations from DfI-Roads in relation to City Picnic's temporary Pavement Café Licence which had been impacted by the re-opening of Fountain Street at its junction with Castle Street.

The Committee was reminded that the Council, in June 2020, decided to introduce a temporary process for considering pavement café applications to assist the hospitality sector during the pandemic. The temporary Pavement Café Licensing Scheme was extended by the Council in September 2022 and would expire on 30th September 2023.

City Picnic restaurant had been granted a temporary Pavement Café Licence in Fountain Street, close to the junction with Castle Street. When this licence was granted this portion of Fountain Street was closed to vehicular traffic. DfI-Roads had advised the licensee that pavement café space may be available on Castle Street in the portion that would remain closed to traffic and that they would also consider any other proposals for alternative locations to which the café could be relocated.

Council Officers had met with the licensee for City Picnic and had advised him to engage with DfI-Roads about potential options for relocation of his pavement cafe and that revised site plans based on these discussions should then be submitted to the Council for formal consultation with DfI-Roads thereafter.

Mr. Arthur McAnerney the licensee for the Temporary Pavement Café Licence had submitted new plans for the relocation to Castle Street in the remaining closed portion between the junction of Fountain Street and Castle Junction. Mr McAnerney was engaging with DfI and Building Control staff to ensure that all documentation and technical information was in place.

The Building Control Manager advised that should the Committee decide to revoke the licence, the Council was required to notify the licensee of its intention, stating the grounds for doing so and that representations may be made by the licence holder.

It was reported that Mr. D. McFarlane, Divisional Roads Manager and Mr. G. Lawther, Development Control Manager were in attendance on behalf of DfI-Roads, as were Mr. A. McAnerney, the Licensee and his business partner Mr G. Gregg. The Chairman invited DfI to deliver their representation.

Mr. McFarlane provided the Committee with a timeline from 2017 and referred to the situation caused by the Primark fire which had turned Fountain Street into a temporary cul-de-sac. He also referred to the temporary Pavement Café Licence Scheme which arose out of the Covid-19 pandemic in which DfI had been a consultee. He advised that City Picnic and Voodoo had been granted applications on the basis that they were operating not in the middle of public road but on a temporary cul-de-sac. Therefore, DfI had worked with the Council and the 2 applications had been approved based on the fact that they were temporary, and when Primark reopened it would revert back to being a public road. Mr. McFarlane informed the Committee that he was not aware of any other pavement café in Belfast being located on a public road. He stated

that unknown to Dfl the temporary licences were extended by the Council in September this year. He added that when Primark opened on 1st November the hoarding had been removed and the road reverted back to being a live public road. At this point, Council and Dfl met with City Picnic and Voodoo. He explained that Dfl were in a position to offer an alternative arrangement to City Picnic whereby they could move the pavement café to Castle Street. Mr McFarlane stated that it was his understanding that there had been no formal application made for this but Dfl were content to work with City Picnic on the matter. He explained that the issue arising from the pavement cafés not relocating would introduce the need for service vehicles servicing Fountain Street to reverse which would create a significant probability of a serious accident occurring and Dfl could not accept that risk.

A Member asked Dfl if any other businesses in the area had complained in relation to deliveries. Mr. McFarlane replied that there had been no other complaints and reiterated that the current arrangement was dangerous and it was a safety issue caused by the blocking of a public road. Another Member asked if the reverting of this arrangement was to facilitate Primark alone. Mr McFarlane stated that it was a case of returning the road network to pre-Primark fire arrangements. In response to a question from a Member as to which businesses were being serviced by the deliveries, Mr. McFarlane could not confirm but stated he had observed 9 vehicles reversing in one day. He provided details of previous servicing arrangements for deliveries whereby there was no need for vehicles to reverse in that part of Fountain Street. He stated that access to the Norwich Union car park was proving difficult too because of the location of the pavement cafés.

A Member asked Mr. McFarlane if there was vehicular access from Fountain Street to Wellington Place. He confirmed that traffic can reverse from that area as it was wider and was an open public road. Another Member asked if there was data available in relation to increased traffic for the Council to examine. Mr. McFarlane reiterated the fact that large vehicles were reversing in Fountain Street and Dfl would not accept the risk.

A Member voiced concerns in relation to the reversing of the reported 9 vehicles in Fountain Street given the level of footfall in the area and would like to hear the views from other traders in the area before any decision was reached. Mr. McFarlane referred to vacant shop frontages at Norwich Union House which could provide a solution and maintain the safe passage of vehicles.

A Member expressed empathy with City Picnic and Voodoo and recognised the complex situation and asked who would be liable if a pedestrian was hit by a reversing vehicle. The Member referred to stakeholder conversations to date and asked if the objective of the conversations was to find a solution that suited all whilst keeping pedestrians safe. Mr. Lawther responded that good progress had been made to date and reiterated that from a Dfl perspective the current Pavement Café Licence arrangement in Fountain Street would never have been acceptable albeit the road was temporarily closed and formalised by Dfl to facilitate it, and that Fountain Street now had no need to be closed.

The Chairperson welcomed Mr. A. McAnerney and Mr. G. Gregg from City Picnic and invited them to make their representation.

Mr. Gregg welcomed the opportunity to put City Picnic's case across and informed the Committee that the process had been started to move the pavement café from Fountain Street to Castle Street given it was pedestrianised and would bring vibrancy to that area. He stated that they had been coerced and put under pressure to move to Castle Street. Mr. Gregg referred to DfI's position of reverting to the original road network and added that the world had changed over the last 4 years since the Primark fire and the pandemic in terms of looking at pedestrianisation and the vibrancy of the city specifically in relation to Fountain Street. Although he agreed with the safety issues, Mr. Gregg questioned the need to revert to the original road network and suggested arriving at a solution that fits all such as a one-way system. He explained that before the Primark fire he had claimed 6 times for ripped awnings caused by reversing lorries. He referred to the access to the Norwich Union carpark and expressed his concerns about the safety of the building. Mr. Gregg informed the Committee that he would welcome further consultation with DfI and described the matter as a 'knee jerk' reaction to get the road open quickly.

A Member referred to her recent engagement with City Picnic, Voodoo, DfI and with Council Officers as it was of great concern. The Member expressed frustration as to how the matter had been handled by DfI and described how the Department's approach had been unreasonable. The Member asked the Committee to look favourably on City Picnic's new licence application when it came forward as the business needed certainty.

Another Member stated she didn't agree with the licence being revoked as the pavement café had created vibrancy in the area which had helped the business and in turn boosted the economy. The Member stated that if properly managed, the pavement café and the servicing arrangements could operate together safely and agreed with other speakers that there should be more conversations to find an alternative plan.

The Chair stated he agreed with the sentiment of all the speakers and asked City Picnic if they were content to move to Castle Street. Mr. Gregg confirmed he was content to move but needed certainty in relation to whether or not Castle Street would remain pedestrianised or not. Discussion ensued in relation to pedestrianisation, finding a safe and holistic solution and to 'build back better'. A Member referred to the thousands of students that were now in the area which had created a moving population so there was a need to think differently in a more innovative and creative way.

A Member raised the matter of liability which had not been answered. The Interim City Solicitor/Director of Legal and Civic Services confirmed that ultimately liability would be with the driver.

A Member referred to the Council's vision for the city and noted the frustration with Dfl in this regard. The Member asked if the matter was deferred would the responsibility lie with Dfl to look at the safety of pedestrians in that area. Mr. McFarlane replied that it had been looked at and Dfl had made the Council aware of the risk and the only safe option was to provide circular movement for vehicles. Mr. Lawther advised that Dfl had started to consider the larger picture of pedestrianisation in the city and there was a commitment to discuss this further. He reiterated that his concern was that Fountain Street was a public road and the pavement café licence was sat on a public road and it was not for the Council to decide whether it was closed or not.

The Committee agreed to defer the review of the Pavement Café Licence to enable all stakeholders to discuss the matter further to find a solution and mutual consensus.

Review of Pavement Café Licence – Voodoo, Fountain Street

The Chairperson welcomed Mr. C. Smyth, Licensee and invited him to make his representation.

Mr. Smyth clarified that despite being granted a second temporary Pavement Café Licence, he was unable to establish the Santeria cocktail bar, 19 Fountain Street as the land was currently being adversely possessed by the owner of 23 Fountain Street who had taken a legal action to prevent the café being put there. He added that if the land had been the property of the owner of 23 Fountain Street, then he shouldn't have been granted a pavement café licence. Mr. Smyth advised that he had informed Dfl of this matter to which Dfl had declined interest. He informed the Committee that the only pavement café Voodoo had was the one shared with City Picnic in the middle of Fountain Street. He informed the Committee that the ambition for the area was to create vibrancy with limited investment due to the temporary arrangement which had been recognised by the Committee. He highlighted that energy costs were now more of an issue than Rates costs which had resulted in businesses closing. He stated that it was gracious of the Council to extend the temporary pavement café arrangement. He referred to the 4-day notice from Dfl to vacate which had led him to seek political and media support which had bought time. He referred to the option of moving alongside Norwich Union House which was a possibility however, the matter of the demolition of Norwich Union House was live. He advised the Committee that he had had discussions with McAleer and Rushe who had informed him that the demolition of Norwich Union House would not take place for about 4 months due to conservation rules.

Mr. Smyth recognised the safety issues caused by reversing vehicles however, he agreed with a Member's point that the situation needed proper management.

A Member asked Mr. Smyth about the proposal of moving Voodoo's pavement café to Castle Street. He replied that the proposal was never to move to Castle Street as it was too detached from the business. Moving it to Castle Street would create security implications due to removing it from the line of sight especially as Voodoo was largely a night-time business and there were drug and alcohol issues in the area.

Another Member asked if this situation would have an impact on jobs and the business especially on the run up to Christmas. Mr. Smyth stated it would have an

impact if the pavement café can't be moved and approved and referred to the current difficulty of hiring staff. Mr. Smyth highlighted the visual improvements to the area which had been created by Voodoo and City Picnic.

Mr. McFarlane asked the Council's legal advisors if the pavement café legislation allowed for a café to be placed on what was technically a public road. He reassured Mr. Smyth that Dfl would work with him and reminded the Committee it was Dfl that had approached City Picnic in relation to moving to Castle Street. Mr. Lawther added they would continue to work with the licensees to evolve the agreement however, the issue was the occupation of a public road which was open to the public. He asked that these licences be relocated off the public road to a more appropriate space.

The Interim City Solicitor/Director of Legal and Civic Services responded to the issues and criticisms raised by Dfl. She advised that Dfl's decision to re-open the road was in the full knowledge that the pavement café licences would be affected. She referred to the definition of the location for which pavement café licences could be granted; and clarified that pavement café licences may be issued in respect of any public area and was defined by any area the public had access to without payment as of right which includes roads.

A Member expressed that she was glad that the will of the Committee was for deferral and requested more information from Dfl in relation to a proper analysis of road safety in the area.

The Committee agreed to defer the review of the Pavement Café Licence to enable all stakeholders to discuss the matter further to find a solution and mutual consensus.

Application for the Provisional Grant of an Amusement Permit – Elite Gaming, Little Vegas (NI) Ltd, 163 Stranmillis Road

The Building Control Manager submitted for the Committee's consideration the following report:

“1.0 Purpose of Report/Summary of Main Issues

To make a final determination on an application for the Provisional Grant of an Amusement Permit under the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (the Order).

Premises and Location	Ref. No	Applicant
Elite Gaming 163 Stranmillis Road Belfast, BT9 5AJ	WK/2020026 52	Little Vegas (NI) Limited Unit 7 and 8 Ardboe Business Park, Kilmascally Road, Dungannon Co. Tyrone BT71 5BJ

2.0 Recommendations

2.1 In considering the application for the Provisional Grant of an Amusement Permit, the Committee shall have regard to the Order and Belfast City Council's Amusement Permit Policy, as follows:

- a) The fitness of the applicant to hold a Permit having regard to his character, reputation and financial standing, and**
- b) The fitness of any other person by whom the business is to be carried on under the Permit would be managed, or for whose benefit that business would be carried on,**
- c) In considering the fitness of a body corporate to hold an amusement permit, the Council shall also have regard to the character, reputation and financial standing of the directors of the body corporate and any other persons who have executive control of it and who have a financial interest in it, as if the permit were, or were proposed to be, held by them jointly**
- d) Representation, if any, from the sub-divisional commander of the Police Service of Northern Ireland in whose sub-division the premises are situated, and**
- e) Representation, if any, as a result of the public notices of advertisement.**

2.2 The Committee is then required to make a decision based on the following options set out under the Order.

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.**

2.3 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
 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.
- 2.4 If, upon hearing the applicant, the Committee is minded to grant the permit provisionally, it is requested to consider delegating authority to the Director of Planning and Building Control, in consultation with the City Solicitor, to issue the permit once all necessary technical requirements relating to health, safety, welfare and amenity have been completed to the satisfaction of the Building Control Service.
- 2.5 Should the Committee refuse the application for the Provisional Grant of an Amusement Permit or decide to grant the application subject to discretionary conditions, the applicant may within 21 days from the date on which notice of the decision is served on him, appeal to the county court.
- 3.0 **Background**
- 3.1 The Committee, at its meeting on 17th August 2022, agreed, after hearing from the applicant and their representative, that it was minded to refuse the application for the provisional grant of an Amusement Permit for the ground and first floors of 163 Stranmillis Road.
- 3.2 This decision was taken on the basis that the application did not comply with the criterion of the Council's Amusement Permit Policy, in that the first floor of the proposed premises was immediately adjacent to residential use property.
- 3.3 A copy of the minute and the report from 17th August is attached at Appendix 1.
- 3.4 The Order requires that the Committee, when minded to refuse an application, must afford the applicant the opportunity to make representations at a specified Licensing Committee meeting on the matter before making a final determination on the application.
- 3.5 The applicant subsequently confirmed their desire to avail of the opportunity to make further representation and will be in attendance at your meeting together with their representatives.

4.0 Key Issues

4.1 The Directors of Little Vegas (NI) Limited are Conor Francis Forbes, Aine Forbes, Ciara Anne Forbes and Shea Michael Forbes.

4.2 A statement in support of the application has been provided for consideration and is included at Appendix 2.

4.3 The key matters outlined in the statement are that:

- **Planning permission for the amusement premises (covering all floors) was granted in February 2012.**
- **The Health and Environmental Services Department was consulted on that 2012 permission and considered the proposal acceptable in the express context of the adjoining business and residential uses. Therefore, in the context of the original grant, and the Council's consideration of same, are identical.**
- **The amusement permit was first granted in 2013. There have been no objections to any of the renewals of the permit since 2013.**
- **The criterion (d) (ii) guidance cannot be considered as determining, because to do so ignores the same factual context that saw the planning permission granted in 2012.**
- **A fresh Noise Impact Assessment ('NIA') has been carried out for the proposal, and the expert advice is that there will be no noise disturbance.**
- **Notwithstanding the findings of the expert noise consultants, as a goodwill gesture, the applicant proposed additional noise attenuation to ensure no adverse impact.**

Amusement Permit Policy

4.4 The Belfast City Council Amusement Permit Policy, ratified at Council on 1st May 2013, outlines those matters which may be taken into account in determining any amusement permit application and indicates that each application must be assessed on its own merits.

4.5 As outlined at the meeting on 17th August, it was concluded that whilst the location of the permit application satisfies most criteria in the Amusement Permit Policy it is not considered to meet criteria (dii). This criterion relates to the

proximity of proposed premises immediately adjacent to residential use. Having regard to the potential impact on residential amenity, the Permit Policy advises a precautionary approach by discouraging the opening of amusement arcades in such locations.

4.6 In response to the applicant's appeal submission, the following points are made:

- Unlike planning policy, the Permit Policy places greater emphasis on the nature and operations of an amusement centre. These premises are currently open from 3.00pm until 3.00am Monday to Sunday – as indicated on the premises' front door. Members may wish to consider the practicality of restricting first floor operations to 10.00pm.
- Impact on residential amenity does not solely relate to noise levels emanating from inside a property, it also relates to the level of activity generated by a business and, in particular, noise nuisance outside the premises.

4.7 Notwithstanding the above, the applicant has provided a noise impact assessment which outlines that noise levels are within recognised limits and should not adversely affect the amenity of residents in the adjacent property.

4.8 The Committee is reminded that, in addition to the above legal requirements and assessment criteria, it may take into account any matter which is deemed relevant. The Committee may depart from the Policy where it is appropriate to do so, although it is envisaged that this should only happen in exceptional circumstances.

4.9 A copy of the Council's Amusement Permit Policy is included in the submission from the applicant attached in Appendix 2.

Financial and Resource Implications

5.1 Administration of Amusement Permit applications is included in current budgetary estimates.

Equality or Good Relations Implications/ Rural Needs Assessment

6.1 None.”

The Building Control Manager reminded the Members that at its meeting on 26th June 2013, it agreed to refuse the granting of an amusement permit to Little Vegas Ltd for the ground and first floors of 163 Stranmillis Road. Subsequently at the

Committee's meeting on 21st August 2013 following the hearing of representations, it was agreed to grant an amusement permit for the ground floor of the premises only.

It was reported that Mr. S. Beattie, Kings Counsel (KC), Mr. T. Bell, Planning Consultant and Mr. Forbes, the applicant were in attendance and invited them to make their representation on behalf of the applicant.

Mr. Beattie drew the Committee's attention to a specific line in policy criterion 4 on page 9 of the policy and stated the policy did not cater for this scenario and that it was there to deal with renewals or new grants. He added that the policy did not subdivide the property/premises and the factual context of the application made it unique. He made it clear it was not a precedent case and was a case that in 2012, the planning authorities granted planning permission in which the Council was a consultee. He continued that in 2013, the Council granted an amusement permit for the property which had been renewed for 9 years with the exception of one year during the Covid-19 pandemic. Mr Beattie informed the Committee that there had been no objection to the renewals which it should take into consideration otherwise it would put the applicant at a disadvantage. Mr. Beattie stated that this was not a new grant on a greenfield site or a previously unlicensed site and that the planning context of the grant and each of the renewals had always been in the context of a mixed-use development which included residential use and nothing had changed. He advised that that there was no likely impact upon residential amenity in terms of noise. Mr. Beattie further advised that the applicant had offered to do further noise attenuation on the premises to further guarantee there would be no internal breakout of any possible noise. In terms, of the outside of the premises there had been no objections raised by Officers or by any member of the public in relation to the operation of the premises. Mr. Beattie informed the Committee that the applicant had checked the history of the premises and found one incident of someone having tethered a dog to the fence which had resulted in complaints and the individual concerned had been barred. Mr. Beattie provided the Committee with a summary whereby, the existing premises had operated as a good neighbour for 9 years and it would be wholly inappropriate for the policy to be rewritten to seek to make a subdivision between the ground and first floors and would be kept under scrutiny. He concluded that there would be an economic issue where the Rates would double and there was more than ample factual reasoning why the policy was not applicable and on this occasion should not be applied.

In response to a request from a Member, the Interim City Solicitor/Director of Legal and Civic Services provided policy clarification and confirmed that there would be circumstances where it would be appropriate to depart from the policy where factual circumstances warrant it. In response, Mr. Beattie stated that no government agency had set out what exceptional circumstances were. He added that he could not think of any other case where this had happened and asked would this make it exceptional.

For the purpose of clarity, the Building Control Manager advised that the Committee granted the amusement licence for the ground floor some time ago and there was no facility to extend an existing permit so the applicant now had to apply for a permit for the ground and first floors however, if that was refused the applicant would still have the ground floor to operate. He informed the Committee the matter was about whether it was appropriate to depart from the policy based on the exceptional circumstances.

Discussion ensued around conditions within the application and the fitness of the applicant.

The Committee granted 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.

Non-Delegated Matters

Schedule of Meetings 2023

The following dates had been identified for meetings of the Licensing Committee for the period from January to December, 2023.

- Wednesday, 18th January
- Wednesday, 15th February
- Wednesday, 15th March
- Wednesday, 12th April
- Wednesday, 14th June
- Wednesday, 16th August
- Wednesday, 20th September
- Wednesday, 18th October
- Wednesday, 15th November
- Wednesday, 13th December

(All meetings to commence at 5.00 pm)

The Committee approved the schedule meetings for 2023.

Licence Fees for Sex Establishments

The Building Control Manager reminded the Committee that after reviewing the current fees, as agreed by Committee in November 2021, these were deemed to be proportionate to the cost of the processes associated with administering a Sex Establishment Licence.

It was therefore proposed that the fees set previously remain as shown below.

Application Fee	£3,200
Renewal Fee	£1,430
Transfer Fee	£1,125
Licence Fee	£500

The Sex Establishment Licence fees would ensure the cost of the operational and administration processes were proportionate to the licensing scheme.

The Committee agreed that the current fees, reviewed in November 2021, remain unchanged.

**Refusal of an Application for a New
Licence to operate a House in Multiple
Occupation at Flat 2, 26 Lawrence Street –
Update on Legal Proceedings**

The Interim City Solicitor/Director of Legal and Civic Services provided the Committee with an update on a statutory appeal of its decision of 16th June, 2021 to refuse an application for a new HMO licence for a property located at Flat 2, 26 Lawrence Street, Belfast, on the grounds of overprovision. She advised that officers await confirmation as to whether the appellant was to appeal/judicially review the court's decision and would provide the Committee with a further update in due course.

The Committee acknowledged the hard work of the team in defending this appeal. It noted the update on the legal proceedings.

Chairperson