

Licensing Committee

Wednesday, 20th March, 2024

MEETING OF THE LICENSING COMMITTEE

HELD IN THE LAVERY ROOM

Members present: Councillor McKeown (Chairperson);
Aldermen McCullough and Rodgers;
Councillors Anglin, P. Donnelly, Doran,
D. Douglas, Lyons, Murray,
F. McAteer, McCabe, McCann, McKay,
McMullan, Ó Néill and Smyth.

In attendance: Ms. N. Largey, City Solicitor/Director of Legal and
Civic Services;
Mr. S. Hewitt, Building Control Manager;
Mr. K. Bloomfield, HMO Manager;
Mr. C. McLaughlin, Solicitor (Regulatory and Planning); and
Mrs. L. McLornan, Democratic Services Officer.

Apologies

Apologies for inability to attend were reported from Alderman McCoubrey and Councillors Bradley and Collins.

Minutes

The minutes of the meeting of 21st February, 2024 were taken as read and signed as correct. It was reported that those minutes had been adopted by the Council, at its meeting on 4th March, 2024, subject to the omission of those matters in respect of which the Council had delegated its powers to the Committee.

Declarations of Interest

Councillor Smyth declared an interest in Item 2c, Update on the Renewal of an Entertainments Licence for Shaftesbury Bowling and Recreation Club, in that he had previously been approached by the complainant and had provided them with advice and he would therefore leave the meeting for the duration of the item.

Issue Raised in Advance by a Member

Airbnb Accommodation – Councillor McKeown to raise

Councillor McKeown advised the Committee that he had previously raised the issue of a lack of regulation of short-term lets, such as Airbnbs, but that there had been no Executive in place at that time.

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At his request, the Committee agreed that a letter be sent to the newly reinstated NI Executive, asking it to consider taking action in establishing an appropriate regime for the management of short-term lets in Northern Ireland.

Delegated Matters

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

Licences Issued 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.

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

The Committee noted a list of applications which had been approved under the Council's Scheme of Delegation during March 2024.

**Update on the Renewal of an Entertainments Licence
for Shaftesbury Bowling and Recreation Club**

(Councillor Smyth, having declared an interest, left the room for the duration
of this item)

The Building Control Manager reminded the Committee that, at its meeting on 21st June 2023, it had received representations from the applicant and objectors in relation to the application to renew the licence. At that meeting, the Committee had agreed to defer the application to enable further consideration by officers of the new evidence which had been raised by the objector and to allow the Council to support further mediation between the applicant and objector.

He outlined to the Committee that the additional evidence provided had since been reviewed by the Service and that further discussions had taken place with the applicant and objectors. As a result of communication between both parties, the Members were advised that the objectors were no longer pursuing their objection to the application.

No noise complaints had been received by the Council since the meeting in June, 2023. The Service carried out monitoring and a "during performance" inspection at the club on 13th February, 2024, and all management and technical matters were satisfactory. The Committee was reminded that, under the Scheme of Delegation, the Director of Planning and Building Control had responsibility for exercising all powers in relation to the issue of Permits and Licences except where adverse representations had been made. As the issues raised by the objectors had been resolved, the Entertainments Licence had since been issued under delegated authority.

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The Committee noted the update which had been provided.

Application for a New Licence to operate a House of Multiple Occupation for Flat 2, 4 Donnybrook Street; and

Application for a New Licence to operate a House of Multiple Occupation for Flat 1, 6 Ireton Street;

Application for a New Licence to operate a House of Multiple Occupation for Flat 2, 6 Ireton Street;

Application for a New Licence to operate a House of Multiple Occupation for Flat 3, 6 Ireton Street;

Application for a New Licence to operate a House of Multiple Occupation for Flat 1, 23 Ireton Street;

Application for a New Licence to operate a House of Multiple Occupation for Flat 2, 23 Ireton Street; and

Application for a New Licence to operate a House of Multiple Occupation for Flat 3, 23 Ireton Street.

Before the officer presented the report, a Member stated that they felt that the seven applications for new Licences to operate a House of Multiple Occupation should be deferred to a Special meeting to enable the Members to further consider the issue of the displacement of those currently residing in the seven properties.

The HMO Manager outlined to the Committee that a Temporary Exemption Notice (TEN) had been granted for Apartments 1 and 3, 6 Ireton Street, in October 2023, which had expired in January, 2024. He explained that the owner of an unlicensed HMO could apply to the Council for a TEN, having outlined what steps would be taken to stop the premises from being an HMO, such as reducing the number of residents to below three, or that sufficient basic amenities for exclusive use were installed so that occupants did not have to share them. He outlined that officers had not yet revisited the properties to determine whether such actions had been carried out.

A further Member queried whether the deferral of the applications would place a financial burden on the Council. In response, the HMO Manager confirmed that there would be a cost to the Council attached to each application to the Court, as well as the solicitors time which would be required to lodge the applications.

The HMO Manager highlighted that applications to the Court would have to be made in respect of each of the properties by 3rd April and 19th April respectively.

The City Solicitor advised the Committee that, due to upcoming staff leave, it would not be possible to hold a Special Meeting before 3rd April.

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The City Solicitor advised the Committee that, if it was to defer the applications, it was required to have the permission of the owner/landlord before applications could be made to the Court.

Mr. G. Treacy, the owner of the six apartments in Ireton Street, was in attendance. He stated that, while he was not familiar with the process of making applications to the Court, if it would mean that the Committee would give the licences further consideration, he was content for the applications to be made to the Magistrates Court.

The Committee was advised that the owner of Flat 2, 4 Donnybrook Street, was not in attendance.

The Committee, therefore, agreed to initially deal with Items 2e - 2j, namely, the applications for Flats 1, 2 and 3, 6 Ireton Street and Flats 1, 2 and 3, 23 Ireton Street.

Moved by Councillor McCabe,
Seconded by Councillor Doran,

That the six applications for a new Licence to operate a House of Multiple Occupation at Flats 1, 2 and 3, 6 Ireton Street and Flats 1, 2 and 3, 23 Ireton Street, be deferred to the next meeting, so that the Members can further consider the issue of displacement of those currently living in the properties.

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

At the request of a Member, the HMO Manager left the meeting for a short period to advise the owner of Flat 2, 4 Donnybrook Street, regarding the Committee's proposal, however, contact could not be made.

(The Committee stood adjourned for a short period to allow the officers to determine the next steps.)

The City Solicitor advised the Committee that further information had come to light during the period of adjournment, whereby the owner of the properties would, in fact, be liable to pay significant financial penalties as a result of the Committee's decision to defer the six applications in Ireton Street.

She advised the Members, therefore, that the Committee might wish to revisit its earlier decision, given that the applicant and all the Members who had voted were still present. She highlighted that, as all the information had not been provided to the Members or the applicant at the time of the decision, it would therefore have been liable to a successful Call-in.

Subsequently, after the applicant had been informed, the Committee agreed to revoke its previous decision to defer the applications and agreed to consider the applications for Flats 1, 2 and 3, 6 Ireton Street and Flats 1, 2 and 3, 23 Ireton Street.

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The HMO Manager presented the details of the six applications together.

He explained that each of the properties had had the benefit of an HMO licence issued by the Housing Executive in the name of the applicant, which had expired in January 2021 for the flats in 6 Ireton Street, and September 2023 for the flats in 23 Ireton Street. Reminder letters had been issued to the applicant, informing him of the need to renew the HMO licences before the expiry of the existing licences.

The Committee was advised that Temporary Exemption Notices had also been issued in respect of the properties, and that new HMO applications were received for the six properties on 3rd January, 2024.

The HMO Manager outlined that, pursuant to the 2016 Act, the Council could only grant a licence if it was 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, were fit and proper persons;
- c) the proposed management arrangements were satisfactory;
- d) the granting of the licence would not result in overprovision of HMOs in the locality;
- e) the living accommodation was fit for human habitation and –
 - i. was suitable for occupation as an HMO by the number of persons to be specified in the licence, or
 - ii. could be made so suitable by including conditions in the licence.

The Committee was advised that, as they were new applications, the Council's Planning Service was consulted. It had confirmed that full planning permission for use as an HMO had been granted on 30th June, 2006, in respect of 6 Ireton Street, and 7th January, 2008, in respect of 23 Ireton Street.

It was reported that the NIHMO Unit had consulted with the Environmental Protection Unit in relation to daytime and nighttime noise; the Public Health and Housing Unit in relation to rubbish accumulation/filthy premises; and the Enforcement Unit in relation to litter and waste and all had confirmed that there had been no relevant enforcement action required in respect of any of the issues in the HMO in the last 5 years.

The applicant had confirmed that they had not been convicted of any relevant offences under the 2016 Act.

For the purpose of Section 12(2) of the 2016 Act, the Council had determined the locality of the accommodation as being Housing Management Area (HMA)

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“2/22 Botanic, Holylands, Rugby” as defined in the document Council’s Local Development Plan Strategy, which was formally adopted on 2nd May, 2023. It was reported that Legal Services had advised that there was a clear requirement in section 8 of the 2016 Act upon the Council to be satisfied that the granting of a licence would not result in overprovision.

The officers had had regard to:

- a) the number and capacity of licensed HMOs in the locality; and
- b) the need for housing accommodation in the locality and the extent to which HMO accommodation was required to meet that need.

To inform the Council in its consideration of the above provisions, the Council had taken account of the 2023 Strategy given that “Nurturing sustainable and balanced communities was a fundamental aim of the LDP’s housing policies.” In particular, the Council had considered Policy HOU10, which stated:

“Within designated HMAs, planning permission will only be granted for Houses in Multiple Occupation (HMOs) and/or flats/apartments where the total number of HMOs and flats/apartments combined would not as a result exceed 20% of all dwelling units within an HMA.”

The Committee was advised that, on the date of assessment, 15th February, 2024, 88% of all dwelling units in policy area HMA 2/22 were made up of HMOs and flats/apartments, which in turn exceeded the 20% development limit as set out in Policy HOU10. There were 1122 (45%) licensed HMOs with a capacity of 4780 persons in that HMA.

It was outlined that there were a total of 2473 dwelling units in HMA 2/22. The Committee was advised that the fact that the use of the property as an HMO was permitted for planning purposes was a relevant consideration in determining whether the granting of the licence would result in overprovision.

The Houses in Multiple Occupation Manager reminded the Committee that there was a need for intensive forms of housing and, to meet that demand, HMOs were an important component of the housing provision. HMOs, alongside other accommodation options within the private rented sector, played an important role in meeting the housing needs of people who were single, who had temporary employment, students, low income households and, more recently, migrant workers and asylum seekers.

The Committee was advised that, on 15th February, 2024, out of 92 premises available for rent within the BT7 area on PropertyNews.com there were 52 licensed HMOs which, from the information presented on the website, represented 229 bed spaces. The HMO Manager advised the Committee that anecdotal evidence from previous conversations with HMO managing agents suggested that there was currently a lack of HMO accommodation available in that locality.

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On 7th December, 2022, the Ulster University Director of Campus Life advised the Council's City Growth and Regeneration Committee that there was an "increase in competition for HMOs particularly from NIHE, Immigration Services and statutory agencies and there were increasing accommodation issues across the housing sector which required a holistic view and should include the consideration of international students, families and graduates looking for professional accommodation."

However, the QUB Director of Student Plus had confirmed that the current trend indicated a significant move of students to purpose-built student accommodation blocks. She had advised the Members that there were 7,000 purpose built managed student accommodation (PBMSA) rooms in the city, the majority having been built since 2018, and approximately 5,000 in the city centre.

It was reported that November 2023 monitoring information produced by the Council's Planning Service for PBMSA indicated that 2055 bedspaces were currently under construction with an operational date of 2024.

Therefore, with the continued expansion of the PBMSA sector and students transitioning from private rentals to PBMSAs, it was too early to tell whether the increased competition from non-students for HMOs was a temporary problem which could be managed by the contraction in students residing in existing HMO accommodation within the locality, or evidence of an emerging long-term supply issue.

The Houses in Multiple Occupation Manager explained that, in assessing the number and capacity of licensed HMOs, as well as the need for HMO accommodation in the locality, officers could not be satisfied that the granting of the HMO licence would not result in overprovision of HMO accommodation in the locality of the accommodation for the purpose of section 8(2)(d) of the 2016 Act.

The Committee was advised that no objections had been received in relation to the applications. It was also reported that each of the flats had been certified as complying with the physical standards for an HMO for five persons by a technical officer from the NIHMO service, on 1st February, 2024.

On 15th February, 2024, pursuant to Paragraph 9 of Schedule 2 of the Houses in Multiple Occupation Act (Northern Ireland) 2016, officers had issued a Notice of Proposed Decision to the Applicant advising that it was proposing to refuse the six licences on the grounds of overprovision. On 7th March, representations were received in respect of the applications from the owner's legal representative.

The Chairperson invited Mr. G: Treacy, owner, to address the Committee.

Mr. Treacy thanked the Committee for allowing him to present his appeal. He outlined that:

- receiving the news that his six HMO properties were likely to be refused had caused him a great deal of worry and stress over the past few weeks;

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- he had worked hard in his career and taken financial risks in order to make the significant investments in the two properties;
- he had borrowed £450,000 over 25 years to invest in them;
- he would lose approximately £46,000 per annum if the HMO licences were to be refused, as the bedspaces would drop from 25 to 12;
- local estate agents had advised him that the properties would be worth 50% less if they were not licensed HMOs;
- he had never received complaints about any of his tenants and he had maintained them with pride;
- that, under the Human Rights Act, he had the right to the peaceful enjoyment of his property;
- the refusal of the six HMO licences was disproportionate to him having missed the renewal deadlines;
- he had missed the renewal date of one of his properties by five days;
- no officer had phoned him to remind him of the deadlines;
- he had been reassured by an officer in the HMO office, in September 2023, that there would be no issue with getting the licences sorted;
- he had subsequently received letters informing him that his licences were being proposed for refusal, with no warning whatsoever;
- he did not feel that the significance of the consequences of not renewing his licences on time had been explained to him;
- he queried why his applications were being considered as “new” instead of renewals;
- he had spoken with Mr. Polley, Director of Housing in the Department for Communities, in recent days regarding the HMO legislation and that he had confirmed that the purpose of it was not to reduce the number of existing HMOs, rather, it was to set limits going forward and to improve the quality of all HMOs across Northern Ireland, and that there would be severe Human Rights implications if landlords were to have their HMOs taken from them;
- he had not caused the issue of “overprovision” in the area;
- if overprovision of HMOs already existed in the area, then how could the granting of licences lead to overprovision and, similarly, if he had submitted his applications on 5th September, 2023, the applications would not have caused overprovision, yet, submitting them 24 hours later, they somehow were; and
- the Committee should take into account the potential displacement of those residing in the properties.

The Chairperson thanked Mr. Treacy for his deputation. He confirmed that the Committee was not there to rubber-stamp any decision and that it would reach its decision after careful consideration.

Mr. Bloomfield advised the Committee that, in respect of 6 Ireton Street, the licence had expired on 12th January, 2021. A reminder letter had been sent in advance of its expiry. The application to renew the licence was received on 3rd January, 2024, so the property had been occupied as an unlicensed HMO for a period of up to three years, if it was so occupied. In relation to 23 Ireton Street, he confirmed to the Committee

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that the licence had expired on 4th September, 2023, and the application was received on 3rd January, 2024, and two reminders had been issued prior to the expiry of the application.

The applicant stated that he had spoken with the Senior Technical Officer in the HMO office. The HMO Manager explained that that had been in relation to Temporary Exemption Notices (TEN), which had been granted. He reminded the Members that TENs were for the purpose of allowing the applicant to remove the property from HMO usage. TENs were granted for a period of three months, and in exceptional circumstances could be extended for a further three months, which, when granted, allowed the properties to operate without a licence. He clarified that the TENs for five out of the six flats in question had since expired.

The HMO Manager reminded the Committee that it had to have regard to the number and capacity of licensed HMOs in the locality and the need for housing accommodation within the locality, including the extent to which HMO accommodation was required in order to meet that need.

He outlined that the six applications before the Committee were new applications as the licences had expired. As such, the Members were obliged to take overprovision into consideration.

He added that the Members had to consider the number of licensed HMOs in the locality.

The City Solicitor acknowledged that the situation for the applicant was difficult. She reminded the Committee, however, that it was charged with applying the Licensing regime, and therefore it had to consider if the applications before it would result in overprovision. She reminded the Committee that it had previously received notification of difficult circumstances from other applicants and that some of those cases had been taken through the courts. She confirmed to the Committee that the judgements had confirmed that, while missing the expiry date of a licence was a small error, it was a significant error, and that it was not an error which was the responsibility of the Council. She confirmed that the legislation did not allow the Committee to take a different approach in the case of difficult circumstances of an applicant.

She further advised that, if Article 1, Protocol 1 of the Human Rights Act applied, it was important to note that it was not an absolute right, and that there were circumstances in which it was possible to interfere with those rights, including through the regulation of HMOs under the Act.

A Member thanked the officers for their advice in respect of the applications.

In response to a Member's query, the City Solicitor confirmed that the applications had to be dealt with as new applications as there was no such thing as a late renewal. She reported that the issue had been tested through the courts.

The Chairperson asked Mr. Treacy if he wished to confirm any factual inaccuracies. He advised the Committee that one of the reminder letters had been issued

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during peak Covid. He reiterated that the displacement of tenants should be a key consideration, given the high demand for housing in that area. He further stated that he was aware of other properties which had been brought through the HMO office which were late and had been approved and he questioned how that had happened.

In response, the City Solicitor advised that the only applications which she was aware of, which were dealt with in a different way, were seven applications which had been brought to Committee in 2020/2021. She highlighted that there had been an issue regarding a requirement for applying for planning permission and whether people had misunderstood the position. The HMO Manager added that, apart from those applications referred to the City Solicitor, no other valid applications had been treated differently.

Moved by Councillor McCann
Seconded by Councillor Doran and

Resolved – that the Committee agrees to refuse the six applications as, in accordance with Section 12 of the Houses in Multiple Occupation Act (Northern Ireland) 2016, it was satisfied that the granting of the six HMO licences would result in overprovision of HMO accommodation in the locality of the accommodation, as determined under section 8(2)(d) of the Act.

Flat 2, 4 Donnybrook Street

The HMO Manager presented the key aspects of the report to the Committee. He outlined that the property had had the benefit of an HMO licence issued by the Housing Executive which had expired on 18th April, 2023. Reminder letters had been issued to the licence holder, informing him of the need to renew the HMO licences before the expiry of the existing licence.

A new HMO Licence application had been received from the applicant on 13th December, 2023.

The HMO Manager outlined that, pursuant to the 2016 Act, the Council could only grant a licence if it was 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, were fit and proper persons;
- c) the proposed management arrangements were satisfactory;
- d) the granting of the licence would not result in overprovision of HMOs in the locality;
- e) the living accommodation was fit for human habitation and —

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- i. was suitable for occupation as an HMO by the number of persons to be specified in the licence, or
- ii. could be made so suitable by including conditions in the licence.

The Committee was advised that, as it was a new application, the Council's Planning Service was consulted. It had confirmed that a Certificate of Lawful Existing Use or Development (CLEUD) had been granted on 8th December, 2023.

It was reported that the NIHMO Unit had consulted with the Environmental Protection Unit in relation to daytime and nighttime noise; the Public Health and Housing Unit in relation to rubbish accumulation/filthy premises; and the Enforcement Unit in relation to litter and waste and all had confirmed that there had been no relevant enforcement action required in respect of any of the issues in the HMO in the last 5 years.

The applicant had confirmed that they had not been convicted of any relevant offences under the 2016 Act.

For the purpose of Section 12(2) of the 2016 Act, the Council had determined the locality of the accommodation as being Housing Management Area (HMA) "2/08 Edinburgh Street" as defined in the document Council's Local Development Plan Strategy, which was formally adopted on 2nd May, 2023. It was reported that Legal Services had advised that there was a clear requirement in section 8 of the 2016 Act upon the Council to be satisfied that the granting of a licence would not result in overprovision.

The officers had had regard to:

- a) the number and capacity of licensed HMOs in the locality; and
- b) the need for housing accommodation in the locality and the extent to which HMO accommodation was required to meet that need.

To inform the Council in its consideration of the above provisions, the Council had taken account of the 2023 Strategy given that "Nurturing sustainable and balanced communities was a fundamental aim of the LDP's housing policies." In particular, the Council had considered Policy HOU10, which stated:

"Within designated HMAs, planning permission will only be granted for Houses in Multiple Occupation (HMOs) and/or flats/apartments where the total number of HMOs and flats/apartments combined would not as a result exceed 20% of all dwelling units within an HMA."

The Committee was advised that, on the date of assessment, 21st February, 2024, 46% of all dwelling units in policy area HMA 2/08 were made up of HMOs and flats/apartments, which in turn exceeded the 20% development limit as set out in Policy HOU10. There were 183 (30%) licensed HMOs with a capacity of 765 persons in that HMA.

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It was outlined that there were a total of 616 dwelling units in HMA 2/08. The Committee was advised that the fact that the use of the property as an HMO was permitted for planning purposes was a relevant consideration in determining whether the granting of the licence would result in overprovision.

The Houses in Multiple Occupation Manager reminded the Committee that there was a need for intensive forms of housing and, to meet that demand, HMOs were an important component of the housing provision. HMOs, alongside other accommodation options within the private rented sector, played an important role in meeting the housing needs of people who were single, who had temporary employment, students, low income households and, more recently, migrant workers and asylum seekers.

The Committee was advised that, on 21st February, 2024, out of 68 premises available for rent within the BT9 area on PropertyNews.com there were 19 licensed HMOs which, from the information presented on the website, represented 85 bed spaces. The HMO Manager advised the Committee that anecdotal evidence from previous conversations with HMO managing agents suggested that there was currently a lack of HMO accommodation available in that locality.

On 7th December, 2022, the Ulster University Director of Campus Life advised the Council's City Growth and Regeneration Committee that there was an "increase in competition for HMOs particularly from NIHE, Immigration Services and statutory agencies and there were increasing accommodation issues across the housing sector which required a holistic view and should include the consideration of international students, families and graduates looking for professional accommodation."

However, the QUB Director of Student Plus had confirmed that the current trend indicated a significant move of students to purpose-built student accommodation blocks. She had advised the Members that there were 7,000 purpose built managed student accommodation (PBMSA) rooms in the city, the majority having been built since 2018, and approximately 5,000 in the city centre.

It was reported that November 2023 monitoring information produced by the Council's Planning Service for PBMSA indicated that 2055 bedspaces were currently under construction with an operational date of 2024.

Therefore, with the continued expansion of the PBMSA sector and students transitioning from private rentals to PBMSAs, it was too early to tell whether the increased competition from non-students for HMOs was a temporary problem which could be managed by the contraction in students residing in existing HMO accommodation within the locality, or evidence of an emerging long-term supply issue.

The Houses in Multiple Occupation Manager explained that, in assessing the number and capacity of licensed HMOs, as well as the need for HMO accommodation in the locality, officers could not be satisfied that the granting of the HMO licence would not result in overprovision of HMO accommodation in the locality of the accommodation for the purpose of section 8(2)(d) of the 2016 Act.

The Committee was advised that no objections had been received in relation to the applications. It was also advised that the flat had been certified as complying with

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the physical standards for an HMO for five persons by a technical officer from the NIHMO service, on 1st February, 2024.

The HMO Manager read out a statement from the owner, who was unable to attend the meeting. The owner had stated that:

- HMOs were essential in providing affordable shared accommodation for the City's key workers;
- without access to affordable HMOs, individuals were forced to compete for other rental properties, driving up rents and exacerbating the housing crisis;
- denying a licence for an HMO didn't solve a problem, rather, it only served to exacerbate it; and
- over the past 36 years, the property had not just been an HMO but a home to scores of young professionals from all over the world.

Moved by Councillor McKay
Seconded by Councillor Smyth and

Resolved – that the Committee agrees to refuse the application as, in accordance with Section 12 of the Houses in Multiple Occupation Act (Northern Ireland) 2016, it was satisfied that the granting of the HMO licence would result in overprovision of HMO accommodation in the locality of the accommodation, as determined under section 8(2)(d) of the Act.

Chairperson