

Licensing Committee

Wednesday, 22nd January, 2020

MEETING OF LICENSING COMMITTEE

Members present: Councillor S. Baker (Chairperson);
The Deputy Lord Mayor, Councillor McReynolds;
Alderman Sandford; and
Councillors Bunting, Donnelly, Dorrian, Ferguson,
Groves, Howard, Hussey, Hutchinson, T. Kelly,
Magee, Magennis, McAteer, Smyth and Whyte.

In attendance: Mr. S. Hewitt, Building Control Manager;
Ms N. Largey, Divisional Solicitor;
Mr. J. Cunningham, Regulatory Services Manager;
Mr. K. Bloomfield, HMO Unit Manager; and
Ms. E. McGoldrick, Democratic Services Officer.

Apologies

No apologies were reported.

Minutes

The minutes of the meeting of 11th December were taken as read and signed as correct. It was reported that those minutes had been adopted by the Council at its meeting on 6th January, subject to the omission of those matters in respect of which the Council had delegated its powers to the Committee.

Declarations of Interest

Councillor Hussey declared an interest in relation to item 2.c) Objections received to an application for the renewal of a 7-Day Annual Entertainments Licence for the Hatfield Bar, in that he had been previously employed to do legal work on behalf of the applicant, and took no part in the decision-making process.

Delegated Matters

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

Applications Approved under Delegated Authority

The Committee noted a list of licences and permits which had been issued under the Council's Scheme of Delegation.

Competing Street Trading Licence applications for Fountain Lane

The Committee was advised that competing applications had been received from two persons wishing to trade from a designated site in Fountain Lane. The Building Control Manager reviewed the applications and outlined the process for the Committee to grant one of the following applicants the pitch.

He advised that Mr. S. Donnelly had applied to sell tour tickets, tour memorabilia and gifts. The proposed times of trading were Monday to Sunday from 9.00 a.m. to 5.00 p.m. and Mr. Donnelly proposed to use a stall on wheels measuring 3m by 1.5m.

He informed the Members that the second application had been submitted by Mr. M. Kerr, who had applied to sell: Souvenirs and Memorabilia, Special Day, Occasions and Celebration goods and accessories; Flowers and plants; Clothing and accessories; Jokes and Toys; Confectionery; Cold Beverages; Jewellery; Flags; Whistles; Batteries; Art work; Beauty and Cosmetics; and Football merchandise from a traditional market stall measuring 3m by 1.5m. The proposed times of trading were Monday to Sunday from 6.00 a.m. to 10.00 p.m.

The Committee was informed that the two applicants were in attendance in order to outline their proposals for the site.

Applicant 1

Mr. P. Rogan, Manager of City Tours, on behalf of the applicant, informed the Committee that they had a similar provision on Fountain Street and believed that this stall would benefit their company and brand, and help grow their network of information points across the City Centre. He described the design of the stall and advised that they intended to sell bus tickets and memorabilia.

Applicant 2

Mr. M. Kerr and Mrs. G. Kerr indicated that they wished to sell all types of tours, souvenirs and seasonal stock, including special occasion goods and they intended the stall to be a one-stop-shop for tourists. They suggested that the stall had been in their family for over 20 years and they would like to trade at the site.

During points of clarification, Mr. Kerr clarified that he was currently unemployed and if his application was successful, the stall would provide him with an income to support his family.

After discussion, the Committee, in its capacity as Licensing Authority, agreed, in view of the fact that he did not hold a Stationary Street Trading Licence currently and that he proposed to sell a wider mix of products, that it was minded to grant to Mr. M. Kerr, a Stationary Street Trading Licence, on a one-year trial basis, permitting him to sell Tour Tickets, Souvenirs and Memorabilia; Special Day, Occasions and Celebration goods and accessories; Flowers and plants; Clothing and accessories; Jokes and Toys; Confectionery; Cold Beverages; Jewellery; Flags; Whistles; Batteries; Art work; Beauty and Cosmetics; and Football merchandise on a Monday to Sunday between the hours of 6.00 a.m. and 10.00 p.m., in Fountain Lane, at a site which had been designated previously for the sale of those commodities, subject to:

- i. the applicant providing all necessary documentation;
- ii. the receipt of the appropriate licensing fees; and

As a consequence of the decision to grant the Licence to Mr. Kerr the Committee agreed that it was minded to refuse the application which had been submitted by Mr. Donnelly, on the grounds set out in Sections 9(1) (a) (i) of the Street Trading Act (Northern Ireland) 2001, namely, that the location at which they wished to trade was unsuitable by virtue of the fact that there was only one designated site available. .

The Building Control Manager informed the Members that the unsuccessful applicant would be advised that, in accordance with the Street Trading Act (Northern Ireland) 2001, they would be permitted to make written representation to the Council within twenty-one days from the date of notice.

Objections received to an application for the renewal of a 7-Day Annual Entertainments Licence for the Hatfield Bar

The Building Control Manager advised that, in relation to the aforementioned renewal application received on 25th October, subsequently, 20 objections to the renewal application had been received and all of the objections had been received outside of the 28-day statutory period.

He explained that, as the objections against the application were received outside the 28-day statutory period, the Committee was required to determine if it wished to exercise its discretion to consider them and, if so, give the objectors and the applicant an opportunity of addressing the Committee.

He reminded the Committee that, at its meeting on 18th January 2017, it had adopted the following criteria when considering late objections received outside the 28-day statutory period:

1. Had a reasonable explanation been provided, in writing, by the objector as to why their representation had not been made within the 28-day period;
2. Does the representation provide substantially different additional information to that already contained within representations that have been received within the 28-day period;
3. How far outside the 28-day period were the representations received;
4. The proximity of the objectors to the premises;
5. The number of other representations received outside the 28-day period; and
6. Whether there were any other material considerations which would warrant consideration of the objection.

He explained that, arising from criteria outlined above, the Service had received correspondence from 6 of the objectors outlining the reasons for their late objection

(5 outlined in the report and an additional objection tabled at the meeting). He highlighted that, after the agenda had been published, an objection had also been received from Councillor Groogan.

With the permission of the Chairperson, Councillor Groogan addressed the Committee and provided an overview of her objection to the application. She implied that many of the objectors had not realised that the application had been advertised or the deadline for submission of objections had passed. She stated that the area had been recently designated as a Special Action Area under community planning to assist in its regeneration. She suggested that the Committee should allow the objectors to discuss their concerns at a future Committee.

During discussion, the Committee raised concerns in relation to the lack of public notification of the newspaper advertisements and highlighted that, of the 20 objections which had been received, all had raised similar issues for consideration such as concerns about loud entertainment music, and other matters of public nuisance. The Committee discussed further the need to accept the reasons for the late objections and that the issues raised regarding the process should be escalated to the Minister for Communities and with Senior Management.

The Building Control Manager explained that the legislation regarding the public notice advertisement requirements of Entertainments Licensing Applications and advised that the concerns in relation to the requirement of advertising in only one newspaper had been raised with the Department for Communities before. It had previously been suggested that the legislation be changed to enable the Council to publish applications received online. He also advised that in the absence of a legislative change that the Service could notify Members by area of any applications that were received.

After discussion, the Committee agreed to exercise its discretion and consider the 6 late objections to allow the objectors and the applicant to address the Committee at a future meeting. The Committee noted that, at such meeting, after it had received the depositions, it would be required to consider and make a recommendation regarding the application.

The Committee also agreed to write to the Minister for Communities to highlight the necessity to review the current legislation regarding the public notice advertisement requirements of Entertainments Licensing Applications.

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

The Committee noted the applications that had been issued under the Council's Scheme of Delegation.

Application for the Renewal of a Licence to Operate a House of Multiple Occupation for 85 Dunluce Avenue;

Application for the Renewal of a Licence to Operate a House of Multiple Occupation for Flat 2, 15 India Street; and

Application for the Renewal of a Licence to Operate a House of Multiple Occupation for 22 Elaine Street

Before presentation of the aforementioned applications commenced, the Committee agreed to consider the three applications together.

The Committee was reminded that responsibility for HMO's had been transferred to local district councils in April 2019 with the introduction of a new licensing regime. The HMO Unit Manager advised that any existing registrations under the old NIHE Registration Scheme operated were deemed to be licences at the point of transfer. He stated that licences were issued for a 5 year period with standard conditions, however, where it was considered necessary to do so, the Committee could also impose special conditions.

He explained that the purpose of the Houses in Multiple Occupation Act (Northern Ireland) 2016 ('the 2016 Act') was to enable better regulation of Houses in Multiple Occupation (HMO), by introducing a system of licensing, a fitness test for applicants and new provisions about standards of housing.

He pointed out that, following the publication of the three applications, an objection had been received in relation to the applications which raised general concerns about the overprovision of HMO's, the antisocial behaviour associated with HMO's, their effect on communities and issues around planning permission. He confirmed that none of the issues raised had concerns specific to the premises in the three application premises.

The HMO Unit Manager advised that, as a valid objection had been received, the applications must be considered by the Committee and highlighted that, pursuant to the 2016 Act, the Council may only grant a licence if it was satisfied of the following:

- a) the occupation of the living accommodation as an HMO would not constitute a breach of planning control;
- b) the owner of the living accommodation, and any managing agent of it, were fit and proper persons;
- c) the proposed management arrangements for the living accommodation were satisfactory);
- d) the granting of the licence would not result in overprovision of HMOs in the locality in which the living accommodation was situated;
- 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.

He explained that the issues which could be taken into account when considering the fitness of an applicant were set out at Section 10 of the 2016 Act and included offences concerning fraud or 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 permitted the Council to take into account any other matter which the council considered to be relevant. Section 20 of the 2016 Act stated where the holder of an HMO licence made an application for renewal, the council must apply the above provisions except for (a) and (d); namely whether the use was a breach of planning control or would result in overprovision.

He pointed out that Legal Counsel had advised that councils could not take into account the absence of planning permission through the prism of fitness. On the basis of this advice, Legal Services had confirmed that this also applied to issues around overprovision.

Representations

The Committee received a representation from Mrs. B. Ruddy, a Holylands resident, in objection to the three applications. She suggested that there had been an overdevelopment of HMO's in South Belfast for 20 years and the situation had not got any better with the introduction of the new legislation. She highlighted that there was a negative impact from the overdevelopment of HMO's on the local community, anti-social behaviour and criminal activity, pressure on public services, such as the dumping of rubbish in alleyways, together with pressure on the water and sewerage service network. She implied that the densification of inner south Belfast was overwhelming. She suggested that overprovision should be a consideration of HMO renewals, and the change in definition under Clause 1 of the HMO policy which allowed apartments to be developed, would also lead to densification of area.

Mrs Ruddy stated that the new categorisation of the Holylands and Lower Ormeau as a Special Action Area status, to reduce the number of HMO premises was contrary to the HMO policy and Certificates of Lawful Use. She suggested that anti-social behaviour policies were also needed for HMO's and highlighted the confusion and lack of detail in the current newspaper advertisement notifications. She requested that the Committee should place a temporary halt to HMO renewal's and certificates' of lawful use and the Council should raise the need for a review of the HMO policy with the Minister for Communities.

The Committee received a representation from Mr. E. Cameron in support of the application for 15 India Street. Mr Cameron provided an overview of his families' ownership of the house and explained that, after renovations, it had been rented-out since 2009 and had complied with all NIHE housing checks. He stated that the location of the property was close to Botanic Avenue, which was a very commercial area which did not generate a community. He implied that the over-population raised by the objector was questionable, as prior to being rented, the premises had been occupied by nine people. He advised that the waste was collected regularly and the alleyway was kept clear. He suggested that parking was impacted by commuters and visitors using the spaces rather than residents. He indicated that anti-social behaviour could be attributed to customers of local social establishments rather than residents. He stated that there were no grounds for the Committee to refuse the application.

The Committee received a representation from Mr. N. Jordan in support of the application for 22 Elaine Street. He advised that the location of the premises in Stranmillis had been used by students for decades and standards of housing were kept high. He stated that there were only a few problematic premises and more stringent HMO legislation would help alleviate these issues. He implied that the objection was a broad generalisation and could not be used. He suggested that the application met with the criteria and the premises also had planning approval. He advised that he managed the premises with regular inspections and ensured the front entrance and alleyway were kept clean and tidy.

During points of clarification, Mrs. Ruddy confirmed that her objection was not directed at the aforementioned applications, however, implied that this was just part of the picture and the whole situation needed to be reviewed, together with the conflicting legislation.

During discussion, the Divisional Solicitor assured the Committee that when officers had written to the objectors and suggested that their objections were not considered to be relevant, these remarks were written in terms of the legislative scheme and were intended to be helpful and not dismissive of the issues which had been raised by the objectors.

She reminded the Committee that it was required to decide whether or not to grant the renewal applications and in doing so, had to assess whether the applicants were fit and proper persons and if the premises were suitable. She confirmed that assessment of the applications must be in accordance with the requirements of the legislation.

She highlighted that the People and Communities Committee had set up a Special Action Group for the broader HMO issues and the draft Local Development Plan, which included detailed HMO policies to assist in providing balanced communities, was currently going through the statutory process for approval.

After discussion, the Committee considered the three aforementioned applications:

85 Dunluce Avenue

The Committee approved the application for the Grant of the renewal of a Licence to Operate a House of Multiple Occupation for 85 Dunluce Avenue.

Flat 2, 15 India Street

The Committee approved the application for the Grant of the renewal of a Licence to Operate a House of Multiple Occupation for Flat 2, 15 India Street.

22 Elaine Street

The Committee approved the application for the Grant of the renewal of a Licence to Operate a House of Multiple Occupation for 22 Elaine Street.

After discussion, the Committee also agreed that a report be submitted to a future meeting to provide an update on issues with the new HMO legislation with a view to engaging with the Minister for Communities on the matter.

Non-Delegated Matters

Review of Amusement Permit policy

The Committee considered the following report:

“1.0 Purpose of Report or Summary of Main Issues

1.1 This report seeks Committee endorsement to commence a process to review and update the Amusement Permit policy which was ratified at Council on 1 May 2013.

1.2 When formulated it was anticipated that the policy would be reviewed every three years to remain abreast of the dynamics of the gambling industry and any changes in legislation.

2.0 Recommendations

2.1 Members are asked to agree that Officers commence a process to review the current Amusement Permit policy and note that a future report will be brought to Committee with a revised draft Policy for consideration.

3.0 Main report

Background

3.1 The overall aim of the amusement permit policy is to serve as a guide for Elected Members, Council officers, applicants and the wider public on applications for amusement permits under the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 in the Belfast City Council area.

3.2 By outlining those matters which may be taken into account in determining an application for an amusement permit this policy was developed to introduce greater clarity, transparency and consistency to the decision making process.

3.3 The need for the policy was highlighted by previous Court decisions on amusement permit applications.

3.4 **Amusement Permit Policy**

The Policy consists of two components:

1. Legal requirements under the 1985 Order, and
2. Assessment criteria for suitability of a location.

3.5 There are five interrelated criteria set out in the Policy that should typically be considered when assessing the suitability of a location for an amusement arcade:

- (a) Retail vibrancy and regeneration of Belfast:
- (b) Cumulative build-up of amusement arcades in a particular location:
- (c) Impact on the image and profile of Belfast:
- (d) Proximity to residential use:
- (e) Proximity to schools, youth centres, and residential institutions for vulnerable people:

Judicial review proceedings

3.6 Members will recall, at your meeting of 13 November 2019, reconsidering an application from Hazeldene Enterprises Limited, for the grant of an Amusement Permit which was originally granted at your meeting on 6 October 2014.

3.7 Subsequently, Oasis Retail Services Limited, an objector to the grant of the amusement permit, sought leave to apply for Judicial Review in respect of the decision of the Council to grant the permit. The Court of Appeal decision, delivered on 24 September 2018, resulted in the quashing of the decision of the Council to grant a permit to Hazeldene Enterprises Limited.

3.8 One of the key findings of the Court of Appeal related to the consideration of cumulative impact on the grant of requested permits on the character of the area.

3.9 Members are advised that review of the Policy was delayed pending the outcome of the judicial review proceedings and that these must now be taken into account in any revised policy.

Review process

3.10 When the initial policy was created a consultant with experience of policy formulation and planning matters was

utilised and an exercise will be undertaken to procure a consultant to assist with the re-drafting of the policy.

- 3.11 This process will be undertaken in close liaison with Legal Services to enable a revised policy to be drafted for consideration by Members.
- 3.12 Following agreement on the revised policy a formal consultation will then be undertaken, in line with Council guidelines, and the findings will then inform a final revised policy for approval by Council.

Financial & Resource Implications

- 3.13 The financial and resource implications associated with this report will be catered for within current Service budget.

Equality or Good Relations Implications/Rural Needs Assessment

- 3.14 All equality and good relations issues will be taken into consideration in formulating a revised policy.”

The Committee agreed that officers commence the process to review the current Amusement Permit Policy and noted that the revised draft Policy would be submitted to a future meeting for consideration.

Chairperson