



Subject:	Addendum report in respect of an application for a New Licence to operate a House of Multiple Occupation for 32 Stranmillis Gardens, Belfast. BT9 5AS
Date:	20 January 2021
Reporting Officer:	Kevin Bloomfield, HMO Unit Manager, Ext. 5910
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Is this report restricted?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Is the decision eligible for Call-in?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

1.0	Purpose of Report or Summary of main Issues
1.1	The Committee, at its December 2020 meeting, was asked to consider whether it would grant or refuse the application for a new HMO licence at 32 Stranmillis Gardens, Belfast. BT9 5AS. However based on advice from legal services the report was deferred to allow member to further consider at the January meeting the paper presented on "Proposed process for dealing with new licence applications for premises which previously operated as a HMO" which would have a direct impact on this case.
1.2	At the October 2020 meeting following a presentation and a written submission on behalf of the owner of the accommodation, members deferred the application until the committee meeting on 18 November 2020 for officers to provide additional clarification to the points raised. A copy of the written correspondence provided by the applicant, setting out further representations is included at Appendix One to this report. For the purposes of this report the issues are abbreviated and the officer response is detailed below.
1.3	This report should be read in conjunction with the report presented to Committee at its October meeting which is at Appendix Two.
1.4	That the HMO Subject Plan does not present a true socioeconomic picture of the area and should not be used to assess over provision
1.5	Pursuant to section 12 of the Houses in Multiple Occupation Act (Northern Ireland) 2016 ("the 2016 Act") the Council can refuse an application where it is satisfied that the granting of the HMO licence will result in overprovision of HMO accommodation in the locality of the accommodation.

1.6	<p>In order to ensure consistency as both a planning and licensing authority, the same area was used to determine the locality. This is HMO Policy Area “HMO 2/19 Stranmillis” as defined in the document “Houses in Multiple Occupation (HMOs) Subject Plan for Belfast City Council Area 2015 (the “2015 Plan”).</p>
1.7	<p>In assessing whether the grant of a new licence in this locality would result in overprovision officers had regard to –</p> <ul style="list-style-type: none"> (a) the number and capacity of <u>licensed</u> HMOs in the locality; and (b) the need for housing accommodation in the locality and the extent to which HMO accommodation is required to meet that need.
1.8	<p>On the date of assessment, 29 September 2020 there were a total of 366 licensed HMOs out of 761 dwelling units in HMO policy area “HMO 2/19 Stranmillis” which equates to 48% of the total dwelling units, which in turn exceeds the 30% development limit as set out at Policy HMO 1. The 366 licensed HMOs have a capacity of 1548 persons. The total number of dwelling units in a Policy Area is measured by Ordnance Survey’s Pointer database.</p>
1.9	<p>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.</p>
1.10	<p>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.”</p>
1.11	<p>At the time of writing this report there were 10 HMO properties advertised for let as student houses on the website Property News in BT9 with a capacity of 40 bed spaces. It would therefore appear that there is sufficient supply of HMO accommodation in the area.</p>
1.12	<p>Consequently, officers were of the view that the granting of the HMO licence will result in overprovision of HMO accommodation in the locality.</p>
1.13	<p>Legal Services has advised that there is a clear requirement in Section 8 of the 2016 Act upon the Council to be satisfied that the granting of a licence will not result in overprovision.</p>
1.14	<p>The fact the use of the property as a 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 a HMO.</p>
1.15	<p>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.</p>
1.16	<p>Reminder letter about renewal only sent one week before the licence was due to expire</p>
1.17	<p>Prior to the date of transfer the NIHE took the decision based on legal advice that it could not issue reminder letters relating to a regulatory process it would not be responsible for administering. The NIHE did however in November 2018 write to all HMO owners on behalf</p>

1.18	of the Department of Communities (DfC) informing them of the upcoming changes to the legislation.
1.19	In this case a reminder letter was issued by both post and email 7 days prior to the expiry of the existing licence. An application was not received until 13 th February 2020. It is a matter of good practice that reminder letters should be sent and in this case one was sent. However, there is no legislative requirement for the council to do so and it is ultimately the responsibility of the owner of the HMO to bring forward the application for renewal. Whilst a reminder was not sent in the same manner that NIHE would have done, one was sent a week before the application was due to expire. Members will be aware that an application can be made online.
1.20	The applicant acknowledges in his written response that he let the licence lapse but cites a number of factors for the lapse which included some health concerns and he was in the process of changing the managing agent for the property due to misconduct and bad management by the previous agent. he was in the process
1.21	That he was required to have planning permission before submitting his application
1.22	Up to September 2019, applicants for renewal were advised that a failure to have planning permission for use of the property as an HMO would be considered when assessing whether the applicant is a fit and proper person. Applicants were further instructed that while it did not mean that an application would automatically be refused, they should ensure that they had the necessary permission or certificate of lawful use in place before applying for renewal of their licence.
1.23	Furthermore, at that time the advice given verbally by staff to applicants was that the application could be submitted without all the documentation being completed prior to the licence expiring. Whilst applicants were advised to ensure that they had the necessary planning permission or certificate of lawful use in place prior to making the required renewal application, you will note that applicants were also advised that not having said permission "...does not mean that an application will automatically be refused...". Furthermore, at that time the advice given verbally by staff to applicants was that the application could be submitted without all the documentation being completed prior to the licence expiring.
1.24	Officers have no record of the applicant seeking advice regarding the application process, prior to the expiry of his existing licence. Had he done so officers would have advised him to submit his application.
1.25	Not provided with details of the objection.
1.26	Details of the objection were included in the notice of proposed decision issue to Mr Rafferty on 30 September 2020.
1.27	The agenda seems to be in issuing the fixed penalty notice
1.28	The Fixed Penalty Notice issued on the 14 October 2019 offered Mr Rafferty the opportunity to discharge any liability to conviction by the payment of the FPN. The serving of the FPN followed an inspection of the property on the 2 October 2019 at which time it was identified that the property was occupied as an HMO by 5 unrelated individuals. Mr Rafferty took independent legal advice regarding the FPN at the time and subsequently chose to pay the FPN on the 28 October 2020.
1.29	The level of fixed penalty is within the range permitted in the Houses of Multiple Occupation Act (NI) 2016.

1.30	Why could we not of been advised of the temporary exemption notice before being issued us with the £5000 fine?
1.31	On the 2 October 2019 an authorised officer from the HMO Unit inspected the property and established that the property was occupied as an HMO by 5 individuals from more than 2 households which was an offence pursuant to section 30(1) of the 2016 Act. Prior to the 2 October 2019 the HMO Unit was not aware that the property was continuing to be used as an HMO and as such was not in a position to provide advice regarding Temporary Exemption Notices.
1.32	A temporary exemption notice applies where the owner of an unlicensed HMO makes an application to the council explaining the steps to be taken to stop the premises from being an HMO (such as ensuring that the number of occupants reduces below 3, or that sufficient basic amenities for exclusive use are installed so that occupants do not have to share them), and the council must be satisfied that these steps will be successful.
1.33	Threat of another £5000 fine
1.34	The advice provided to Mr Rafferty on the 21 October 2019 was that if he intended to take steps to remove the property from HMO usage he could apply for a temporary exemption notice. We further advised that if the property remained an unlicensed HMO and no such temporary exemption notice was in place the Council would have to consider taking further action pursuant to section 30 “Unlicensed HMO” of the Houses in Multiple Occupation Act (Northern Ireland) 2016.
1.35	Mr Rafferty in his application for a temporary exemption notice dated the 24 October 2019 give an undertaking that he would remove the accommodation from HMO usage by “Eviction of three or all five of tenants”.
1.36	Subject Access Request (SAR)
1.37	Mr Rafferty submitted a SAR in relation to this licence application on the 4 October 2020, the council responded with the requested information on the 5 November 2020.
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: <ul style="list-style-type: none"> (i) Grant the application, with or without any special conditions; or (ii) Refuse the application.
2.2	If the application is refused, the applicant has a right of appeal to the County Court. Such an appeal must be lodged within 28 days of formal notification of the decision. The licence will remain in place pending the appeal.
	Appendices – Documents Attached
	<ul style="list-style-type: none"> • Appendix 1 – Applicant’s correspondence in response to notice of proposed decision • Appendix 2 – Original Committee Report • Appendix 3 – Minutes of the Licensing Committee meeting on 14 October 2020 • Appendix 4 – Applicants correspondence of the 3 November 2020 • Appendix 5 – Officers response to the correspondence of 3 November 2020