

Licensing Committee

Wednesday, 20th January, 2021

MEETING OF LICENSING COMMITTEE HELD REMOTELY VIA MICROSOFT TEAMS

Members present: Councillor Donnelly (Chairperson);
Aldermen Copeland and Sandford; and
Councillors Bradley, Bunting, Howard, Hussey,
Hutchinson, T. Kelly, Magee, Magennis,
McAteer, McCabe, McCullough,
Nicholl, Smyth and Walsh.

In attendance: Mr. A. Thatcher, Director of Planning
and Building Control;
Mr. S. Hewitt, Building Control Manager;
Ms. N. Largey, Divisional Solicitor;
Mr. K. Bloomfield, HMO Unit Manager;
Mr. J. Cunningham, Regulatory Services Manager;
Mr. V. Donnelly, City Protection Manager;
Mrs. S. Steele, Democratic Services Officer; and
Ms. C. Donnelly, Democratic Services Officer.

Apologies

Apologies for inability to attend the meeting were reported from Councillors M. Kelly and McKeown.

Minutes

The minutes of the meeting of 16th 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 7th 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 Hutchinson confirmed that he was not related to any individual who had applied for a licence to operate a house of multiple occupation (HMO).

Presentation

Mr. D. Boyle

The Chairperson welcomed Mr. Boyle, a private landlord, to the meeting.

Mr Boyle informed the Committee that he required further time to consider the proposed process for dealing with new licence applications for premises which previously operated as a HMO.

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He informed the Members of his concerns surrounding the application process and the confusion surrounding the requirement for planning permission to accompany an application for a HMO licence. He stated that he also required clarification between an application for a new licence and an application for the renewal of a licence.

He stated that there would be scenarios whereby an application for renewal would be out of time, as an inspection by a Council officer, a requirement of the licence application, on premises to renew a licence where there had been a fire, flood or ongoing renovations, would not authorise the property to operate as a house of multiple occupation, and the licence would therefore expire.

He appealed to the Committee to defer its consideration of the proposed process for dealing with new licence applications for premises which previously operated as a HMO, until further consultation had been undertaken.

The Chairperson thanked Mr. Boyle for his presentation to the Committee.

Mr. S. Magill

The Chairperson welcomed Mr. Magill, from the Landlords Association of Northern Ireland (LANI), to the meeting.

Mr. Magill reported that he welcomed the proposal that HMO Officers would contact licence holders, whose licenses were due to expire, to inform them that planning permission was not required. However he stated that he felt that it was not a common misunderstanding as officers had previously advised landlords that planning permission was required to accompany an application for renewal.

He added that landlords had incurred costs in obtaining planning permission, following the advice of officers, which had not been necessary. He reported that some landlords had forfeited the renewal of a licence and rented their property to fewer tenants, in order to avoid the possibility of losing the application fee or the possibility of a fine, and, as a result, more individuals had been seeking HMO accommodation.

Mr. Magill stated that LANI had engaged McCann and McCann Solicitors to request that the deadline by which applications must be lodged, where the premises have previously operated as an HMO, should be extended by three months until 30th June, 2021.

He pointed out to the Committee that, when making an application for the transfer of ownership of a HMO licence, the application must be submitted within three months from the date of death of the licence holder, and that, on occasions where probate had not been completed, the agent had not been informed of the death or the grieving spouse was not aware of the licence requirement, therefore applying within the timeframe was not possible.

He stated that LANI was asking the Council to address the transfer of ownership timeframe with the Department for Communities and to consider a suitable extension as

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a matter of urgency, and to provide clarification between a new licence application and a renewal application.

The Chairperson thanked Mr. Magill for his presentation to Committee.

Mr. M. McMahon

The Chairperson welcomed Mr. McMahon, a Property Agent, to the meeting.

Mr. McMahon informed the Members that there previously had only been one form for a HMO application, whether it was a new application to renew a licence or to transfer ownership. He pointed out that the first part of the form referred to the requirement of planning permission which confused many landlords, and that they had been unwilling to make an application and risk losing the application fee. He stated that Landlords had been waiting on clarification from the Council on the requirement of planning permission before submitting their renewal applications.

The Chairperson thanked Mr. McMahon for his presentation to the Committee.

Non-Delegated Matters

**Proposed process for dealing with new licence applications
for premises which previously operated as a HMO**

The Divisional Solicitor presented the Committee with an update in respect of the following report:

“1.0 Purpose of Report or Summary of main Issues

To consider how to address the issue of overprovision in respect of certain new applications for a licence to operate a House of Multiple Occupation (‘HMO’) given the requirements of the Houses of Multiple Occupation Act (NI) 2016.

2.0 Recommendations

The purpose of this report is to update members in respect of representations received subsequent to Committee’s last meeting on 16th December 2020.

Committee is asked to note the contents of this report and determine whether to agree the recommendation in the substantive report from December; namely:

That all new applications received up to and including 1st March 2021 where the premises have previously operated as a HMO and have the benefit of planning permission and/or a certificate of lawful use or development (CLUD) will not be considered to result in overprovision given there appears to

have been a generally held misconception that planning permission must be obtained before an application for renewal of a licence was submitted.

That officers write to all HMO licence holders whose licence is due to expire before 1st March 2021 and explicitly advise that if they fail to apply to renew the application before that date the Council will, in accordance with the requirements of the 2016 Act, assess whether the grant of a licence would result in a breach of planning control or result in overprovision of HMO accommodation in the locality.

3.0 Main report

Key Issues

Correspondence from Belfast Holyland Regeneration Association

Since Committee's last meeting correspondence has been received from Tony McGuinness on behalf of Belfast Holyland Regeneration Association.

Officers have carefully considered the representations which have been received and believe the recommendation to Committee is legally robust.

The correspondence asks why the Council does not propose to revoke those licences which were granted prior to counsel's advice being sought.

There is no proposal to revoke licences in respect of which over provision was not taken into account as a separate and distinct issue to planning permission. Legal Services have advised that any such revocation is likely to be subject to the same concerns about fairness and the ability to successfully defend any appeal. This is based upon a number of considerations, including the common misconception that the Council would automatically refuse a renewal application where the owner did not have the benefit of planning permission or a CLEUD.

It was alleged that the paper's advice that there are no equality or good relations issues which arise from the proposal 'insults residents of affected areas' due to the overprovision of HMOs. Officers acknowledge that overprovision of HMO's in certain areas of the city is controversial. However it is not considered that this limited proposal would give rise to an equality or

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good relations issue which would require the Council to screen the decision.

Having considered representations from those landlords who would be affected, officers would propose that all new applications received up to and including 1st March 2021 where the premises previously operated as a HMO and have the benefit of planning permission and/or a CLUD will not be considered to result in overprovision. Officers will also write to all HMO licence holders whose licence is due to expire before 1st March 2021 and explicitly advise that if they fail to apply to renew the application before that date the Council will, in accordance with the requirements of the 2016 Act, assess whether the grant of a licence would result in a breach of planning control or result in overprovision of HMO accommodation in the locality. They will be further advised that this may result in the refusal of the application even if the premises has planning permission or previously operated as a HMO.

In relation to the number of unlicensed HMOs, this query is specifically raised in relation to the application for Penrose Street, Belfast which is also before Committee this evening. There are no live enforcement investigations by either Planning Service or NIHMO Unit in relation to alleged HMOs in that street. Council continues to take enforcement action in respect of any unlicensed HMO properties which come to its attention or those without planning permission

Correspondence from McCann & McCann Solicitors

Correspondence has also been received from McCann & McCann solicitors asking that we extend the proposed transitional period from 1st March 2021 for a further 3 months until 30th June 2021. This is due to the deferral of the report from December and also due to the current Covid pandemic and the current restrictions.

Officers have advised the solicitors that this request would be placed before Committee for consideration. They were however advised that it is the responsibility of landlords to apply to renew their licences before their current licence has expired.

Furthermore, officers advised that its standard HMO renewal, reminder letter has been amended, to remind licence holders that should they fail to renew their licence on time, the Council will take into account planning permission and overprovision as two distinct issues. Officers have also issued further

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reminder letters to those approaching the date for the renewal of their licence, and whom had already been issued with reminder letters, previously.

Other issues

Officers believe it may be helpful to provide some further clarity for members following on from the discussion which took place at Committee in December.

Reference to 'new applications' in December Committee report

It is important to clarify that the reference to 'new' applications should be considered in the context of this report, which is those applications which are essentially an out of time renewal application rather than a new licence. It is also limited to those properties where it is alleged that the failure to renew on time was due to the misconception that planning was required. All of these premises have planning permission/CLEUD and have previously been registered as a HMO under the old NIHE scheme.

The report is not intended to deal with all new applications and the transitional period will not apply to any licences which are due to expire after 1st March 2021.

By way of example, in paragraphs 2.1, 3.6 and 3.14 of the report, there is reference to 'new' applications but this is only a reference to the limited number of applications which this proposal directly relates to, which is considered to be approximately 30-35 properties throughout the city.

Transfer of ownership

Overprovision will not lead to a refusal where there is a transfer of ownership. However this is only where there is a live HMO licence held by the vendor. This remains valid until the property is transferred. Therefore the number of licences in the area remain the same.

Financial & Resource Implications

There are no financial or resource implications relating to this report.

Equality or Good Relations Implications/Rural Needs Assessment

There are no implications relating to this report.”

Proposal

Moved by Councillor Hussey,
Seconded by Alderman Sandford,

That all new applications due to expire 1st March 2021, where the premises have previously operated as a HMO and have the benefit of planning permission and/or a certificate of lawful use or development (CLUD), would not be considered to result in overprovision.

On a vote, ten Members voted for the proposal and seven against and it was declared carried.

Delegated Matters

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

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

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

Application for a New Licence to operate a House of Multiple Occupation for 32 Stranmillis Gardens

The HMO Unit Manager provided an overview of the application and explained that, as a valid objection had been received, the application must be considered by the Committee, pursuant to the 2016 Act and legal advice.

He advised that no noise complaints had been received in relation to the property.

The Committee agreed to grant the application, without any special conditions, contingent upon the ratification of the proposed process for dealing with new licence applications for premises which previously operated as a HMO by Council, at its meeting on 1st February, 2021.

Applications for a New Licence to operate a House of Multiple Occupation for 11 Penrose Street

The HMO Unit Manager provided an overview of the application and explained that, as a valid objection had been received, the application must be considered by the Committee, pursuant to the 2016 Act and legal advice.

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He advised that no noise complaints had been received in relation to the property.

The Committee agreed to grant the application, without any special conditions, contingent upon the ratification of the proposed process for dealing with new licence applications for premises which previously operated as a HMO by Council, at its meeting on 1st February, 2021.

Chairperson