



Subject:	Applications for a New Licence to operate a House of Multiple Occupation for 17 Balfour Avenue, Belfast. BT7 2EU
Date:	10 March 2021
Reporting Officer:	Kevin Bloomfield, HMO Unit Manager, Ext. 5910
Contact Officer:	Kevin Bloomfield, HMO Unit Manager, Ext. 5910 Nora Largey, Divisional Solicitor, Ext. 6049

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	<p>To consider an application for a Licence permitting the use of premises as a House in Multiple Occupation (HMO).</p> <p>Application details</p> <table border="1"><thead><tr><th>Premises</th><th>Application No.</th><th>Applicant(s)</th><th>Managing Agents</th></tr></thead><tbody><tr><td>17 Balfour Avenue Belfast BT7 2EU</td><td>7959</td><td>Mr Michael Clarke</td><td>None</td></tr></tbody></table>	Premises	Application No.	Applicant(s)	Managing Agents	17 Balfour Avenue Belfast BT7 2EU	7959	Mr Michael Clarke	None
Premises	Application No.	Applicant(s)	Managing Agents						
17 Balfour Avenue Belfast BT7 2EU	7959	Mr Michael Clarke	None						
1.2	<p>It appears that the subject premises were operated as an unlicensed HMO by the applicant from 1 April 2019 to 7 December 2020.</p>								
1.3	<p>Given this unauthorised use, officers proposed refusal of the application and the applicant was advised accordingly. As the proposal is to refuse the licence application, such a determination falls outside of the scheme of delegation.</p>								
1.4	<p>As the proposal is to refuse the licence application, such a determination falls outside of the scheme of delegation.</p>								
2.0	Recommendations								
2.1	<p>Taking into account the information presented Committee is asked to hear from the applicant and make a decision to either:</p>								

2.2	<ul style="list-style-type: none"> (i) Grant the application, with or without any special conditions; or (ii) Refuse the application. <p>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.</p>
3.0	Main report
3.1	<p><u>Background</u></p> <p>Following a referral to the NIHMO service an authorised officer called at the property on the 19th October 2020, and spoke to an individual at the property. That individual confirmed he lived in the property with 3 other unrelated individuals and paid rent to the owner.</p> <p>On the 22 October 2020 an evidence of household notice was served on owner in accordance with Section 5(2) of the 2016 Act, inviting him to supply to the Council, evidence that the occupants form no more than two households.</p> <p>On the 26 October 2020 a HMO licence application was received from the owner of the accommodation. As this was a new application the HMO Unit consulted with the Council's Planning Service who on the 27 October 2020 confirmed that a Certificate of Lawful Use or Development (CLEUD) was granted with the planning reference LA04/2019/1969/LDE</p> <p>The evidence submitted in support of the CLEUD confirmed that the property had been rented out annually, to at least 3 persons, since August 2014, thereby establishing the lawful use of the property as a HMO.</p> <p>Further to the evidence of household notice Mr Clarke confirmed on the 17 November 2020 "that the current occupants of the property do form more than two households". As such the property is defined as an HMO.</p> <p>On the 7 December 2020 an authorised officer from the NIHMO Unit inspected the property and established that the property was occupied as an HMO by 4 individuals who form more than 2 households. The officer further established that rent was being paid by those individuals.</p> <p>Officers wrote to Mr. Clarke on the 26 January 2021 asking him if he had a reasonable excuse for operating the accommodation without it being licensed. Mr. Clarke wrote to the HMO on 1 February 2021 offering mitigation (appendix 4) which on review was rejected by the HMO Unit.</p> <p>The Council issued a Fixed Penalty Notice (FPN) on the 19 February 2021 for the sum of £5000.00, offering Mr. Clarke the opportunity of discharging any liability to conviction for the alleged offence, by paying the fixed penalty. Mr Clarke subsequently paid the fixed penalty amount on 3rd March 2021.</p> <p><u>Key Issues</u></p> <p>Pursuant to the 2016 Act, the Council may only grant a licence if it is satisfied that:</p> <ul style="list-style-type: none"> 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— <ul style="list-style-type: none"> (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.
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3.10	As this is a new application the HMO Unit consulted with the Council's Planning Service who on the 6 July 2020 confirmed that a Certificate of Lawful Use or Development was granted with the planning reference LA04/2019/1969/LDE
3.11	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 2/13 Lower Ormeau" as defined in the document "Houses in Multiple Occupation (HMOs) Subject Plan for Belfast City Council Area 2015.
3.12	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.
3.13	On the date of assessment, 25 January 2021 there were a total of 59 licensed HMOs out of 368 dwelling units in HMO policy area "HMO 2/13 Lower Ormeau" which equates to 16% of the total dwelling units. The total number of dwelling units in a Policy Area is measured by Ordnance Survey's Pointer database.
3.14	<p>The NIHMO Unit has consulted with the following units within the Council's City and Neighbourhood Services Department -</p> <ul style="list-style-type: none"> (a) Environmental Protection Unit ("EPU") - who have 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") - who have 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") - who have 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) Cleansing Enforcement ("CE") - who have confirmed that in relation to litter and waste an Article 21 Notice pursuant to the Waste and Contaminated Land (Northern Ireland) Order 1997 was served in Dec 2018 <p><u>Fitness</u></p>
3.15	<p>In considering the question of fitness, Council must have regard to whether the person has committed any offence involving –</p> <ul style="list-style-type: none"> a) Fraud or other dishonesty, b) Violence c) Drugs, d) Human trafficking, or e) A firearm (within the meaning of Article 2(2) of the Firearms (Northern Ireland) Order 2004); f) an offence listed in Schedule 3 to the Sexual Offences Act 2003 (offences attracting notification requirements); g) practised unlawful discrimination in, or in connection with, the carrying on of any business; h) contravened any provision of the law relating to housing or of landlord and tenant law; or

	<p>i) acted otherwise than in accordance with an approved code of practice.</p>
3.16	<p>The council must have regard to whether any associate or former associate of the applicant has engaged in any of the above conduct where it is considered relevant as to the fitness of the applicant.</p>
3.17	<p>The Council is also entitled to take into account any other matter which it considers to be relevant.</p>
3.18	<p>The applicant has confirmed that he has not been convicted of any relevant offences.</p>
3.19	<p>The applicant has not been convicted of any HMO related offences by the Council. The EPU, PHHU and CE, solely in respect of their statutory functions, have confirmed that there are no relevant, previous convictions in respect of the applicant or occupants. Due to data protection issues which have recently arisen, PSNI have not been accepting or responding to notification of these applications. Officers are continuing to engage with PSNI to find a resolution to this issue.</p>
3.20	<p>Please see 3.23 and 3.24 of this report setting out the Officers' concerns in respect of the applicant's fitness to hold a licence.</p>
	<p><u>Attendance</u></p>
3.21	<p>The applicant and/or their representatives will be available to discuss any matters relating to the licence application should they arise during your meeting.</p>
	<p><u>Suitability of the premises</u></p>
3.22	<p>An inspection of the premises was carried out by Officers from the Service on 4 January 2021 at which time it was established that the property meet the physical standards for an HMO.</p>
	<p><u>Notice of proposed decision</u></p>
3.23	<p>On the 23 February 2021, 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.</p>
3.24	<p>The notice of proposed decision stated that the Council proposed to refuse the licence as the Council could not be satisfied that the owner was a fit and proper person. The notice of proposed decision is at Appendix 5 of this report which contains the following statement of reasons for refusal:</p> <p><i>The Council may grant a licence only if it is satisfied, in addition to other considerations, that the "...the owner of the living accommodation, and any managing agent of it, are fit and proper persons (see section 10)..." (Section 8(2)(b)).</i></p> <p><i>Section 10 of the Houses in Multiple Occupation Act (Northern Ireland) 2016 ("the 2016 Act") provides that in deciding whether a person is a fit and proper person, the Council must have regard to (a) the matters mentioned in subsections (4) to (7), and any other matter which the council considers to be relevant.</i></p> <p><i>Following a referral to the NIHMO service an authorised officer called at the property on the 19th October 2020 and spoke to an individual at the front door of the property, that individual confirmed he resided in the property with 3 other unrelated individuals and paid rent to the owner Mr Michael Clarke.</i></p>

	<p><i>On the 22 October 2020 an evidence of household notice was served on Mr Michael Clarke in accordance with Section 5(2) of the 2016 Act, inviting him to supply to the Council, within the period of 28 days beginning with the date of service of the notice, evidence that the occupants form no more than two households.</i></p> <p><i>On the 26 October 2020 Mr Michael Clarke submitted an application to licence the property.</i></p> <p><i>On the 17 November 2020 a response to the evidence of household notice was received in which Mr Clarke confirmed “that the current occupants of the property do form more than two households“.</i></p> <p><i>Included with the response to the evidence of household notice Mr Michael Clarke indicated that he had applied in August 2019 for, and in, November 2019 a certificate of lawful use or development (CLEUD) was granted. The evidence submitted in support of the application included rental agreements which confirmed that the property had been rented out annually, to at least 3 persons, since August 2014, thereby establishing the lawful use of the property as a HMO.</i></p> <p><i>On the 7 December 2020 an authorised officer from the NIHMO Unit inspected the property and established that the property was occupied as an HMO by 4 individuals who form more than 2 households. The officer further established that rent was being paid by those individuals.</i></p> <p><i>Section 7 of the 2016 Act states that “Every house in multiple occupation (“HMO”) must be licensed under this Act (unless a temporary exemption notice under Section 15 is in effect in respect of it). The property is not licensed as an HMO nor is there a temporary exemption notice in effect in respect of it.</i></p> <p><i>It is clear that the property was let as an HMO from 01 August 2014 until 31 March 2019 without registering it with the Northern Ireland Housing Executive (“NIHE”) as an HMO in accordance with the Statutory Registration Scheme for Houses in Multiple Occupation in Northern Ireland. Furthermore, the property was let as an HMO from 1 April 2019 until 7 December 2020 without licensing the property as an HMO pursuant to the 2016 Act.</i></p> <p><i>Therein, the Council is satisfied that such matters are relevant in deciding whether Mr Michael Clarke, in his capacity as the owner of the HMO, is a fit and proper person.</i></p> <p><i>Subsequently, the Council cannot be satisfied that Mr Michael Clarke is a fit and proper person, in accordance with Section 8(2)(b) and Section 10 of the 2016 Act.</i></p> <p><u>Financial and Resource Implications</u></p> <p>3.25 None. The cost of assessing the application and officer inspections are provided for within existing budgets.</p> <p><u>Equality and Good Relations Implications</u></p> <p>3.26 There are no equality or good relations issues associated with this report.</p>
	<p>Appendices – Documents Attached</p>
	<p>Appendix 1 – Location Map Appendix 2 – Map of HMO Policy Area “ HMO 2/13 Lower Ormeau” Appendix 3 – Correspondence received in response to the evidence of household notice issued to the applicant</p>

	Appendix 4 – Correspondence received in response to the reasonable excuse letter issued to the applicant Appendix 5 – Notice of proposed decision
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