

Licensing Committee

Wednesday, 10th August, 2022

SPECIAL MEETING OF THE LICENSING COMMITTEE

HELD IN THE COUNCIL CHAMBER AND
REMOTELY VIA MICROSOFT TEAMS

Members present: Councillor Matt Collins (Chairperson); and
Councillors Canavan, Gormley, T. Kelly,
McAteer, McCullough, McKeown, Murray,
Smyth and Thompson.

In attendance: Ms. N. Largey, Interim City Solicitor/Director of Legal and
Civic Services;
Mr. K. Bloomfield, HMO Unit Manager;
Mrs. V. Donnelly, City Protection Manager;
Mr. C. McLaughlin, Solicitor (Regulatory and Planning); and
Mr. H. Downey, Democratic Services Officer.

Apologies

Apologies for inability to attend were reported on behalf of the Deputy Lord Mayor (Councillor M. Kelly) and Councillors Bradley, Howard and Nelson.

Declarations of Interest

No declarations of interest were reported.

Delegated Matters

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

Application for a New Licence to Operate a House of Multiple Occupation - 12 Carmel Street

The HMO Unit Manager submitted for the Committee's consideration the following report:

"1.0 Purpose of Report/Summary of Main Issues

To consider an application for a Licence permitting the use of premises as a House in Multiple Occupation (HMO).

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Premises	Application No.	Applicants	Managing Agents
12 Carmel Street, Belfast, BT7 1QE	8730	Mr. Francis Glackin and Mrs. Catherine Glackin	Boyle Properties

- 1.2 The Committee is reminded that licences are issued for a 5 - year period with standard conditions. Where it is considered necessary to do so, the Committee can also impose special conditions.

Background

- 1.3 The property was previously licensed as an HMO in the name of the previous owner who sold the property on 5th April 2019, at which time the licence, in accordance with Section 28 of the Houses in Multiple Occupation Act (Northern Ireland) 2016, ceased to have effect.

- 1.4 On 9th August 2021, an HMO licence application was received from the owners of the accommodation.

- 1.5 On 2nd September 2021, a Temporary Exemption Notice 'TEN' was granted.

2.0 Recommendations

- 2.1 Taking into account the information presented, the Committee is asked to hear from the applicant and make a decision to either:

- (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.

3.0 Main Report

Key Issues

- 3.1 Pursuant to the 2016 Act, the Council may only grant a licence if it is satisfied that:

- a) the occupation of the living accommodation as an HMO would not constitute a breach of planning control;

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- 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—**
 - (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.**

Planning

- 3.2 As this is a new application, the HMO Unit consulted with the Council's Planning Service, which confirmed that a Certificate of Lawful Use or Development was granted on 8th June 2021, with the planning reference LA04/2018/1161/LDE**

Fitness

- 3.3 When considering the fitness of an applicant, the Council must have regard to any offences concerning fraud/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 permits the Council to take into account any other matter which the council considers to be relevant.**
- 3.4 The NIHMO Unit has consulted with the following units within the Council's City and Neighbourhood Services Department –**
- (a) Environmental Protection Unit ('EPU') – it has 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') – it has 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') – it has 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) Enforcement Unit ('EU') – it has confirmed that in relation to litter and waste, there has been no relevant enforcement action required in respect of the HMO in the last 5 years,

3.5 The applicants and Managing Agent have confirmed that they have not been convicted of any relevant offences, as set out at paragraph 3.3 of this report.

3.6 The applicants or Managing Agent have not been convicted of any HMO related offences by the Council. The EPU, PHHU and EU, solely in respect of their statutory functions, have confirmed that there are no relevant, previous convictions in respect of the Applicant, Managing Agent or occupants. Due to data protection issues which have recently arisen, the PSNI has not been accepting or responding to notification of these applications. Officers are continuing to engage with the PSNI to find a resolution to this issue.

3.7 Officers are not aware of any other issues relevant to the applicants' fitness.

Overprovision

3.8 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 2/22 Botanic, Holylands and Rugby' as defined in the document 'Houses in Multiple Occupation (HMOs) Subject Plan for Belfast City Council Area 2015.

3.9 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.

3.10 On the date of assessment, 14th February 2022, there were a total of 1100 licensed HMOs in HMO policy area 'HMO 2/22 Botanic, Holylands, Rugby', which equates to just over 45% of the total dwelling units, which in turn exceeds the 30% development limit as set out at Policy HMO 1. The 1100 licensed HMOs have a capacity of 5022 persons.

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- 3.11 The total number of dwelling units in a Policy Area is measured by the Ordnance Survey's Pointer database.**
- 3.12 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.**
- 3.13 The Council recognises that there is a need for intensive forms of housing and to meet this demand, HMOs are an important component of this housing provision. HMOs, alongside other accommodation options within the private rented sector, play an important role in meeting the housing needs of people who are single, who have temporary employment, students, low-income households and, more recently, migrant workers.**
- 3.14 In September 2017, the Northern Ireland Housing Executive published the document 'Housing Market Analysis Update – Belfast City Council Area' which states that '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.'**
- 3.15 When the notice of proposed decision was issued on 11th March 2022, there were 84 licensed HMOs advertised for let on the website PropertyNews.com in BT7, from the information provided on the website this represented 322 bed spaces. 81 of the licensed HMOs representing 312 bed spaces were in HMO policy area 'HMO 2/22 Botanic, Holylands and Rugby', not all of the accommodation was available for immediate occupancy.**
- 3.16 A further examination of the PropertyNew.com website took place on 3rd August 2022, at which time 5 licensed HMO were advertised in BT7 representing 23 bedspaces, 3 of which were in HMO policy area 'HMO 2/22 Botanic, Holylands and Rugby' comprising 13 bedspaces.**
- 3.17 Anecdotal evidence from conversations with HMO managing agents suggest that that there is currently a lack of HMO accommodation available in the locality. It is too early to tell whether this is a temporary problem or evidence of an emerging long-term supply issue.**
- 3.18 The fact that the use of the property as an 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 an HMO.

- 3.19 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.

Objections

- 3.20 No objections were received in relation to this application.

Attendance

- 3.21 The applicant and/or their representatives will be available to discuss any matters relating to the licence application should they arise during your meeting.

Suitability of the premises

- 3.22 An inspection of the premises was carried out by officers from the service on 28th September 2021, at which time it was established that the first-floor return bedroom was below the minimum bedroom size of 6.5m².

Notice of Proposed Decision

- 3.23 On 11th March 2022, 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.
- 3.24 The Notice of Proposed Decision stated that the council proposed to refuse the licence on the grounds of overprovision. A statement of reasons for the proposal was included in the Notice of Proposed Decision.

Applicant's Response to the Notice of Proposed Decision

- 3.25 On 24th March 2022, the applicant's solicitor submitted a written response to the notice of proposed decision in which she provides representations and commentary on the statement of reasons included in the notice of proposed decision.

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- 3.26** The representations refer to the property being previously grant aided by the NIHE and having the required planning in place. The solicitor states that her client does not accept that there is an overprovision of HMOs in the area and points to several new articles to back up this assertion. To back this up correspondence from 6 local agents are appended outlining their concern about the availability of HMO properties in the area.
- 3.27** The solicitor references that her clients proposed to purchase the property prior to 31st March 2019, but the completion date was amended to 5th April 2019 and was sold subject to the ongoing lease which was in place at that time.
- 3.28** The representation goes on to say that the Council is basing its assumption of overprovision of HMOs in the Holylands area on a 15-year-old document which contains inaccuracies, statistical and predictive flaws, and does not represent a true socio-economic picture in 2022.

Officer Response to the Representations of 24th March 2022

- 3.29** On 7th April 2022, officers responded to the representations made on behalf of the applicant on the 24 March 2022 and provided commentary on each of the points made.
- 3.30** In accordance with section 28 of the 2016 Act, as the applicant failed to apply for a new licence before the date of transfer of the property, the previous licence ceased to have effect on the date of transfer. Therefore, there has not been a valid licence in place since 5th April 2019 and the Council is obliged to consider the application as a new licence application.
- 3.31** As this is a new licence application and, in accordance with Section 8(2)(d) of the 2016 Act, the Council may grant the licence only if it is satisfied that the granting of the licence will not result in over provision of HMOs in the locality in which the living accommodation is situated.
- 3.32** When considering over provision the Council must have regard to: (a) the number and capacity of licensed HMOs in the locality; (b) the need for housing accommodation in the locality and the extent to which HMO accommodation is required to meet that need; and, (c) such other matters as the Department may by regulations specify.
- 3.33** Officers recognise that there is a high demand for HMO type accommodation in HMO policy area 'HMO 2/22 Botanic,

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Holylands, Rugby' at this time. However, in officers' view, the evidence available does not demonstrate a clear need for HMO accommodation at this time. The Committee is entitled to adopt a precautionary approach as this is the only occasion in respect of which overprovision can be taken into account in an area where the level of HMO accommodation already exceeds the limit set out in the HMO Subject Plan by over 50%.

- 3.34 In relation to the criticism regarding reliance upon the HMO Subject Plan, the overall aim of the Subject Plan is to provide a planning framework for HMO development in facilitating sustainable growth and encouraging balanced communities by promoting a mix of housing tenures and types and the creation of quality-built environments which contribute to the achievement of safe, complete and balanced communities for people to live in.**
- 3.35 Officers are of the view that it is entirely reasonable and rationale to use this Plan as a basis for assessing overprovision. This allows for some level of certainty for property owners, prospective purchasers and the general public in relation to the acceptable level of HMO properties in a particular area. Regardless of the fact that the Council did not draft this document, it is a material consideration and one which the Council is entitled to have regard to. The weight to be attached to the HMO Subject Plan is a matter for the Committee having regard to all other material considerations.**
- 3.36 Officers responded to a request for information from Mallon and Co Solicitors, on behalf of the Applicant, under the Freedom of Information Act 2000.**
- 3.37 Officers then received a further three FOIs from the applicant's Managing Agent, dated 29th July and 2nd August 2022, following on from the response issued to the applicant's solicitor. Officers are currently considering those requests pursuant to FOIA.**
- 3.38 In addition, officers also responded to three subject access requests under Article 15 of the General Data Protection Regulation 2016 (GDPR) (see Appendices 7, 8 and 9) from the Applicant's Managing Agent.**
- 3.39 A further subject access request was refused, as the consent of the previous owner of the accommodation to release the information was not obtained.**

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- 3.40 A verbal update on the further FOI requests received on 29th July and 2nd August 2022 will be provided at the Committee meeting.**

Financial and Resource Implications

- 3.41 None. The cost of assessing the application and officer inspections are provided for within existing budgets.**

Equality and Good Relations Implications

- 3.42 There are no equality or good relations issues associated with this report.”**

The HMO Unit Manager reminded the Committee that the Houses in Multiple Occupation Act (Northern Ireland) 2016 had come into effect on 1st April, 2019, at which point responsibility for the regulation of Houses of Multiple Occupation had transferred from the Northern Ireland Housing Executive to local councils. On that date, all Houses of Multiple Occupation which had been registered under the previous legislation had transferred automatically to the new licensing regime.

He explained that this arrangement would, under normal circumstances, have applied to number 12 Carmel Street, which was licenced to operate as a House of Multiple Occupation. However, as the sale of the property to the current applicants had not been completed until 5th April, 2019, the licence could not, under the new regime, be transferred to them. It had, therefore, ceased to exist and the new owners had been required to submit a new application, which was now being presented to the Committee for determination.

He provided an overview of the application and recommended that, should the Committee be minded to grant a new licence, a condition be attached stipulating that the area of the first floor return bedroom be increased to a minimum of 6.5 m², as required under the Houses in Multiple Occupation Act (Northern Ireland) 2016. In response to a Member, he outlined the options open to the Council should that condition not be adhered to.

The Interim City Solicitor referred to the significant number of Freedom of Information and Subject Access Requests which the Council had received in relation to the application. The applicant's legal representative had asked that a decision on the application be deferred to allow for the most recent of those requests to be responded to. She pointed out that officers were of the view that the requests were not specifically related to this application and highlighted the impact which a deferral would have. The Council was required, under the legislation, to determine the application within three months of declaring it valid. That period would, in this case, expire on 20th August and, should there be no determination by then, the Council would be required to grant a 'deemed licence'. That would mean that it would be unable to take the issue of overprovision into account when determining any future licensing applications for this property. However, it was, ultimately, a matter for the Committee to decide whether or not to defer the application.

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The Committee proceeded to determine the application and Mrs. C. Glackin, the joint applicant, together with Mr. J. McClurkin and Ms. P. McGlone, her legal representatives, and Mr. D. Boyle, were welcomed to the meeting.

Mr. McClurkin pointed out that the sale of the property had occurred a mere five days after the transition from the old to the new licensing regime. Had it been completed on time, as intended, the licence would have been renewed as a matter of course. This, he stressed, distinguished this application from others of a similar nature.

He then addressed the Council's proposal to refuse the licence on the grounds of overprovision by stating that the property had been operated as a House of Multiple Occupation for many years. It was, therefore, part of the existing housing stock and should not be viewed as adding to it. He went on to state that the high demand for student housing in what was a university catchment area had been widely documented by estate agents and concluded by urging the Committee to take all of these factors into account and grant the licence.

During discussion, a Member expressed a number of concerns in relation to the grant of a licence for this property. He pointed out that Houses of Multiple Occupation already accounted for over 45% of housing in this area and made reference to rental prices being driven up generally. He then addressed the point which had been made by the applicant's legal representative around this being classified as a student area by pointing out that it comprised other housing and resident types. He went on to highlight the time spent by the Council in cleansing alleyways in this area, and the significant cost involved.

The Interim City Solicitor responded by stating that it was recognised that there were a wide range of issues in this area. She stressed that these could not be attributed solely to Houses of Multiple Occupation and referred to the work being undertaken by the Council and other statutory agencies to bring about improvements. She went on to remind the Committee that it was required to focus on whether or not the grant of this licence would result in overprovision and, in doing so, might wish to take into account the unique nature of the application.

A further Member pointed out that the Committee took its responsibilities seriously when assessing new applications for Houses of Multiple Occupation and that it would grant a licence only when satisfied that to do so would not result in overprovision. However, the circumstances surrounding this new application were unique in that there had been only five days between the introduction of the new regime and the sale of the property.

It was then

Proposed by Councillor Gormley,
Seconded by Councillor McAteer,

That the Committee agrees, in view of the unique circumstances surrounding this application, to exercise its discretion in this instance and

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grant a new licence for a House of Multiple Occupation at number 12 Carmel Street.

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

Accordingly, the Committee agreed to refuse the application, on the basis that to grant it would result in an overprovision of Houses of Multiple Occupation accommodation in that locality.

Chairperson