

Minutes of items taken as Confidential Business at Meeting of Environment Committee of Mid Ulster District Council held on Monday 2 July 2018 in Council Offices, Burn Road, Cookstown

Matters for Decision

E227/18 Application for the Grant of a Provisional Amusement Permit for 21 Irish Street, Dungannon

The Director of Public Health and Infrastructure advised that one of the objectors to the grant of Provisional Amusement Permit owns the premises where the business is currently operating. The Director indicated Council had been advised that the Landlord's Solicitor was taking legal action against the tenant in regards leaving their tenancy agreement early and was trying to implicate the Council in this action. The Director advised that this is a civil issue and Council has no responsibility in this regard.

Councillor Glasgow stated that a planning application had previously been considered for this premises at the Planning Committee and asked if those Members who sit on both Planning and Environment Committee should declare an interest in this item.

The Director of Public Health and Infrastructure advised consideration of whether to grant the amusement permit was a separate matter to that of planning.

Councillor McGinley advised he had spoken in support of the application at the Planning Committee but that he had no conflict of interest.

Councillor S McGuigan stated he had spoken with both the applicant and objectors to the application but had no conflict of interest.

The Council Solicitor stated that declaring an interest is a matter for each Councillor but if there was an actual or perceived conflict of interest then a declaration should be made.

The Director of Public Health and Infrastructure referred Members to further supplementary information circulated which was not included within report, this included objectors written representations of which the applicant had also received a redacted copy before the meeting. Members were advised that each of the objectors would have three minutes to speak and that the applicant would have an equivalent 15 minutes speaking time.

The Chair welcomed the objectors to the meeting and invited them to make their representations.

Mr Doran stated he was the current Landlord of 28 Irish Street, that the premises had been in his family ownership for 100 years and that it had always been his intention to take back the business as his own. Mr Doran felt that if Council grant this amusement permit then he will not be able to apply for a further permit.

Mr Donnelly stated he was a resident on William Street and that there was ongoing disputes and anti social behaviour outside amusement premises in the town. Mr Donnelly referred to the number of migrant workers also frequenting amusement premises and stated that the ongoing disputes meant it was not a nice environment to live in.

Mr McQuaid stated he has had an amusement permit in Dungannon for over 40 years, he advised that there are currently five other amusement permits issued within Dungannon and that if another is granted it would match Newcastle and Portrush, Mr McQuaid stated no other town in Northern Ireland has as many amusement permits. Mr McQuaid stated that legislation had not been followed in that the applicant placed their advertisement for the amusement permit in the Derry Post. Mr McQuaid stated that the advertisement should be placed in a publication which is in "the vicinity" of the premises and this did not happen.

Mr Lavery stated he was Barrister acting on behalf of Mr Toal who has an amusement premises in Wilson's Lane. Mr Lavery stated he believed Mr Doran was going to seek an adjournment of the application this evening.

The Council Solicitor stated that the Council was in receipt of the correspondence from Mr Doran's solicitor and that as it was a private law matter it had no impact on the Council proceedings and was not a reason to adjourn the consideration of the application this evening.

Mr Lavery stated that the applicant did not advertise locally to the premises and did not believe the applicant was a fit person to have a permit. Mr Lavery advised that a member of Mr Toal's staff visited another of the applicant's premises in Belfast and stated that this premises was being run illegally as a casino.

The Council Solicitor stated that Mr Lavery was presenting new information that had not been brought to the Council's attention and there was limited opportunity for it to be considered, tested or challenged by the applicant and/or the Committee.

The Head of Environmental Health read a letter of objection from Southern Area Hospice, this letter stated that the Hospice provide support to people living with palliative conditions and their families and that to grant the amusement permit would result in annoyance and inconvenience to Hospice clients, staff and volunteers.

The Head of Environmental Health read a letter of objection from Neighbourhood Watch, this letter raised concern in relation to car parking, noise disturbance and the saturation of similar premises in the area. The letter also referred to the number of gambling premises being located in areas of social, financial and educational deprivation and that school children walk past these premises on their way to/from school. The letter also raised concern that the application for the amusement permit was only advertised in the Derry Post.

Councillor McGinley asked what the Council position was in relation to the applicant's use of Derry Post to advertise the application for amusement permit.

The Council Solicitor advised that she would need to check, but unless there was an amendment to the legislation, the legislation did not refer to vicinity of the premises, but instead the district of the district council. Thereafter, it would be a matter for Council policy.

Councillor Glasgow referred to the mention of anti social behaviour and asked if this had been reported to the Police.

Mr Donnelly advised that there had been a number of occasions when the Police had been called and he referred to Toals and Hughes premises.

Councillor S McGuigan referred to the fact the applicant was moving from one premises to another and asked if this made a difference.

Mr Lavery stated it was his understanding that this did make a difference.

Councillor Monteith stated this was not a movement of a permit but a fresh application for a permit. Councillor Monteith stated that the current premises belonged to Mr Doran and that he wanted to take back the premises as his own but that he felt he would not be able to do this if a further permit was granted.

Councillor M Quinn asked who polices minimum/maximum bets.

The Director of Public Health and Infrastructure advised this would be a Police issue.

Mr McQuaid stated there was nothing within legislation which allows for the transfer of a permit which is why an application had been received for the new premises.

Councillor Cuthbertson referred to new legislation in England/Scotland/Wales in relation to fixed betting but that this had not been enforced in Northern Ireland due to no government being in place. Councillor Cuthbertson asked if there was a policy in place which limits the number amusement premises in a town.

The Director of Public Health and Infrastructure advised that each application is determined on its own merits and that there was no policy in place which limits the number of amusement premises.

The Chair, Councillor Reid thanked the objectors for their representations following which they withdrew from the meeting.

The Chair, Councillor Reid welcomed the applicant, Mr Forbes and Mr Quinn, applicant's architect to the meeting and invited them to make their representation.

Mr Quinn stated he had been employed by the applicant to work at various premises owned by him. Mr Quinn stated that RM Leisure have been operating for over 40 years and have a number of premises across Northern Ireland with no problems relating to anti social behaviour. Mr Quinn stated that the current premises had been operating in Dungannon for 7 and a half years and there were plans to soundproof and make layout changes to the premises at 21 Irish Street. Mr Quinn stated that

the premises at 21 Irish Street was outside of the primary retail core, has been vacant for 18 months and only been occupied for 10 months in the last 4 years.

Mr Forbes stated that his business had continued to grow over the last 7 and a half years. Mr Forbes stated that most of his customers didn't drive but those that do are encouraged to use car parks in the town and that cost to use car park is redeemable. Mr Forbes advised that the premises at 21 Irish Street are larger than his current premises and that more gaming machines will be put in to cater for his customers of which he already had a membership of over 300.

Mr Forbes advised that he is a member of NIACTA and that his premises was a member of GamCare in which customers with gambling problems could be directed for support. Mr Forbes stated his premises were strictly over 18. Mr Forbes referred to his premises in Belfast and stated that Belfast City Council operate an Amusement Permit Policy which helps to make things clear.

Mr Forbes referred to the notice of termination of tenancy he received and stated that he had not thought of moving premises beforehand but that he had no choice but to do so in order to protect his business. Mr Forbes stated he currently employed 4 members of staff and that if the amusement permit for premises at 21 Irish Street was not granted then his business would have to close down.

Mr Forbes stated that Police have no objections in relation to the application and that he felt the main reason for the objections received was down to competition within the town.

Mr Forbes referred to concerns in relation to placing of advertisement in Derry Post and stated that as he had previously done business with this publication this was why he had used it in this instance. Mr Forbes also stated that he had also been guided by Council officers on which newspapers to place his advertisement of which Derry Post had been mentioned.

Mr Forbes referred to previous reports in newspaper which stated that Dungannon was turning into Las Vegas and advised that his premises would be small in comparison. Mr Forbes stated that his premises were over 18 and strictly regulated but yet lotto tickets can be purchased at most newsagents in the town at the age of 16. Mr Forbes felt his premises was more controlled.

Mr Forbes stated that he was not a new operator in the town but was being forced into making a new application due to the notice of termination of tenancy being received.

In response to Councillor Glasgow's questions Mr Forbes stated that his premises in Dungannon had over 300 members and that whilst customers can come in off the street the business is driven on customers becoming members of the premises which he felt provided a safer environment.

Councillor Glasgow referred to objections received and asked if Mr Forbes had been in contact with the Hospice.

Mr Forbes stated a letter had been addressed to the Hospice but no response had been received.

In response to Councillor Glasgow's questions Mr Forbes stated that customers are encouraged to use car parks in the vicinity of the premises ie. Car park at bottom of Irish Street. Mr Forbes also confirmed that he only advertised his application for amusement permit in the Derry Post which goes on sale in Mid Ulster.

In response to the Chair, Councillor Reid's question Mr Forbes advised that the Police will come to inspect premises when a permit is being renewed, however if there has been no anti social behaviour recorded at the premises then Police may simply contact the applicant by phone to advise they will not be submitting any objections.

The Director of Public Health and Infrastructure referred to the termination of tenancy notice and asked Mr Forbes if he would be moving his business other than for this.

Mr Forbes stated that he had not considered moving premises before the termination had been received but that he had been left with no option but to seek other premises.

The Council Solicitor referred to discussion during Mr Forbes representations regarding the company being the applicant but that the application was in the name of Conor Forbes as was the advertisement that was placed. The Council Solicitor referred to legislative requirements on assessing the fitness of the applicant and asked for confirmation on who the applicant was.

Mr Forbes stated he was a Director in the company but that the application should be in his name.

The Council Solicitor stressed the importance of the Committee being clear about who the applicant was.

Mr Forbes confirmed that the applicant was himself, Mr Forbes.

Councillor S McGuigan asked how Mr Forbes proposed to relinquish his permit of premises at 28 Irish Street.

Mr Forbes advised that the permit for premises at 28 Irish Street would be surrendered.

Councillor Monteith asked Mr Forbes what newspaper he had used to place his advertisement for premises at 28 Irish Street and another application he had made previously for premises at 41 Irish Street.

Mr Forbes stated he would have to check this information.

The Chair, Councillor Reid thanked Mr Forbes and Mr Quinn for their representations following which they withdrew from the meeting.

Councillor Monteith stated that as Council had been named in a High Court document further legal opinion should be sought for July Council meeting.

The Council Solicitor advised that a response in writing had already been sent to Mr Doran's solicitor advising that it was a civil matter between the parties, that there were no grounds to join the Council in those proceedings, that it was not relevant to the Environment Committee's deliberations and in fact, if it was taken in to account this evening, that could be a ground for challenge against the Council and its decision making.

The Head of Environmental Health presented previously circulated report which provided Members with information to assist in making a decision as to whether or not to grant provisional amusement permit for premises at 21 Irish Street.

Councillor McGinley referred back to the comments of the Council Solicitor in relation to perceived conflict of interest and advised that he had spoken in relation to planning application for the premises at 21 Irish Street at a Planning Committee.

The Council Solicitor stated that it was a decision for the Member to make.

Councillor McGinley stated he would withdraw from any further discussion relating to the permit but stressed that he had no conflict of interest.

Councillor McGinley withdrew to the public gallery.

The Council Solicitor stated she had questioned Mr Forbes on who the applicant was as the application for permit had been made in the name of Mr Forbes but that details of the company had been supplied. The Council Solicitor stated that there was some confusion in relation to some of the information on the fitness of the applicant which appeared to have been presented in relation to the company and not the individual and on this basis she would have some concern on Members taking a decision in relation to the grant or refusal of this provisional amusement permit tonight.

The Chair, Councillor Reid stated he would also have some concern in relation to the level of regulation by the Police as Mr Forbes stated the Police had never visited his premises and that review of his permit was done over the phone.

The Council Solicitor stated although she could not speak for the PSNI, she noted that this may be related to a resource issue for the Police and does not necessarily indicate fitness either way.

The Chair, Councillor Reid also had some concern in that the advertisement was placed in a newspaper not local to the premises.

Councillor Glasgow stated he was uncomfortable with the whole thing in that the assessment of the application may be in relation to the business and not the applicant as an individual. Councillor Glasgow also stated he could not understand why the applicant chose to advertise in the Derry Post.

Councillor M Quinn stated that the placing of advertisements was something Committee and Council needed to look at for the future.

Councillor Cuthbertson stated he was aware planning was a separate issue to what was before Members tonight but advised that he had voted against the approval of the planning application for 21 Irish Street at the Planning Committee. Councillor Cuthbertson questioned whether the Committee should deal with an application which is wrong or give the applicant a second chance and that if the permit is refused now where it left the applicant.

Councillor S McGuigan asked what bearing an application from the Landlord of the premises at 28 Irish Street would have to this application. The Councillor also referred to the placing of the newspaper advertisement and asked if there had been any other applications which had got through on not being advertised local to the area of a premises.

Councillor Monteith referred to the inaccuracy of the officer report which stated that 'Irish Street had a mixed use but could not be classed as residential even though there may be some flats'. Councillor Monteith stated that there were over 300 people living in Irish Street and the vicinity, that there were 40 flats above licensed premises on Irish Street and a further 50 flats above another premises on Irish Street. Councillor Monteith stated there were 60-70 flats in Shamble Lane and 60 flats plus a number of dwellings in Union Place. Councillor Monteith stated that Irish Street and the surrounding area had a heavy residential mix and to say there may be "some flats" was inaccurate.

Councillor Monteith also referred to where the advertisement was placed and felt that a review in relation to where advertisements are placed was required. The Councillor stated that advertisements could also be placed on the Council website. Councillor Monteith stated that if the advertisement had been placed locally there would have been a higher number of objections to the application, the Councillor also stated it had been extremely difficult to get information in relation to the application. Councillor Monteith stated there were major issues in relation to the application and also referred to the Oratory opposite the proposed premises and the Hospice which was dealing with vulnerable people.

The Head of Environmental Health referred to case law in relation to knowledge of other premises in an area and advised that there may be another application brought forward for 28 Irish Street once it has been vacated by Mr Forbes. In relation to the placing of the advertisement, the officer stated that the geographical area of the District had changed and whilst the Derry Post may not be a local paper to Dungannon it does have a circulation in the Mid Ulster area.

The Council Solicitor referred back to her previous comments on advertising circulation requirements and that ultimately it is the applicant's application and so he would need to be satisfied that he was meeting the legislative and other requirements. The Council Solicitor advised that she was not readily aware of the case the Head of Environmental Health referred to, but was of the opinion that it was other applications that was relevant and it would only be if there is another application in the system, should it be taken in to account.

The Director of Public Health and Infrastructure stated that 14 objections had been received in relation to this application so the public were aware that the application had been made.

Councillor Kearney felt there was an inaccuracy in that it was not the Planning Committee which placed an advertisement but rather the Planning Department.

Councillor McNamee stated that the applicant had placed his advertisement in a newspaper in the District, the applicant had operated their business for 7 and a half years without complaint and had only made the application based on the need to move his business to another premises.

The Chair, Councillor Reid felt that there were grey areas which required further clarification.

Councillor Cuthbertson asked if the application had been submitted correctly or not and referred to an application made in 2013/14 which was refused.

Councillor Glasgow stated there were a number of questions which needed to be answered and proposed that determination on the grant of a provisional amusement permit for premises at 21 Irish Street, Dungannon be deferred.

The Director of Public Health referred to the ambiguity in relation to the application and process used in relation to the application.

Councillor Cuthbertson asked if the Committee had to go with the information that was in front of them and make a decision.

The Council Solicitor stated that based on the issues surrounding who the applicant is and that an application needs to be assessed on correct information she felt that this was a fundamental issue and in the interests of fairness for the applicant also, that it would be prudent to first seek clarity and then take the application back to Members.

Councillor Cuthbertson asked that if the information supplied is incorrect should the Committee not throw the application out.

Councillor O'Neill seconded Councillor Glasgow's proposal.

The Council Solicitor clarified that it would be appropriate for the application for provisional amusement permit to be deferred based on the need to seek clarity in relation to the application

It was advised that the applicant would be advised of the decision of the Committee and can respond accordingly.

In response to Councillor Kearney's comment the Council Solicitor advised that there is no inherent conflict of interest by virtue of the fact that some Members sit on the Planning Committee and also sit on the Environment Committee.

Resolved That it be recommended to Council to defer making decision in relation to grant of provisional amusement permit for premises at 21 Irish Street, Dungannon.

Councillor McGinley rejoined the meeting.

Councillors Glasgow and Monteith left the meeting at 9.39 pm.

E228/18 Tender report for the appointment of Vehicle Suppliers

The Head of Property Services presented previously circulated report which sought approval to appoint suppliers to provide new and replacement vehicles following a mini competition from the YPO purchasing framework.

Proposed by Councillor McNamee
Seconded by Councillor Buchanan and

Resolved That it be recommended to Council to approve the four vehicle purchases as detailed below from the 18/19 cyclical capital replacement budget –

- 1no. 18T Refuse Collection Vehicle (Environment Services – Refuse) – at a total net cost of £145,900 from Castlereagh Motors
- 3no. 26T Side Loading Refuse Collection Vehicles (Environment Services – Refuse) at a total net cost of £693,000 from Castlereagh Motors

E229/18 HMO Regulation and Transfer to Local Councils

The Director of Public Health and Infrastructure presented previously circulated report which provided update on the Houses of Multiple Occupation function and the potential service delivery arrangements when the function transfers from NIHE in April 2019.

Resolved That it be recommended to Council to agree the Collaboration and Non-Disclosure Agreements for software procurement through Belfast City Council subject to the draft response as referenced at section 3.15 of the report in regard to the HMO Delivery Programme.

E230/18 Service Level Agreement for Provision of Structural Engineering Services

The Head of Building Control presented previously circulated report which sought approval to sign a Service Level Agreement between Mid Ulster District Council and Fermanagh and Omagh District Council for the provision of specialist structural engineering services for Mid Ulster District Council Building Control Service.

Proposed by Councillor McNamee
Seconded by Councillor S McGuigan and

Resolved That it be recommended to Council to approve the Service Level Agreement for provision of specialist structural engineering services for 2018/19.

Matters for Information

E231/18 Confidential Minutes of Environment Committee held on Tuesday 12 June 2018

Members noted Confidential Minutes of Environment Committee held on Tuesday 12 June 2018.

E232/18 Construction of Waste Transfer Station Drumcoo – Capital Works Update

Members noted previously circulated report which provided update on the construction of the new Waste Transfer Station in Dungannon.

E233/18 Contracts Project Update

Members noted previously circulated report which provided update on Capital Projects and Infrastructure Developments within Mid Ulster District.

The Head of Technical Services advised that a further £12,000 of funding had been received in relation to Moneymore Recreation Centre which will be used for purchase of equipment and scheme enhancement.

Councillor Cuthbertson asked if there was an update in relation public realm snagging in Dungannon, in particular a street light which was to be removed.

The Head of Technical Services advised that officers were seeking to organise a meeting with the administrator for the contractor.

Councillor Gillespie asked that Council liaise with DfI Roads to progress relocation of bus shelter from Stafford's Row into Cappagh Village.

E234/18 Award of Residual Waste Contract – Update

The Director of Environment and Property provided verbal update in relation to Legal Challenge lodged by River Ridge Recycling against the award of Council's Residual Waste Contract.

The Director of Environment and Property advised that it had previously been agreed to proceed with a Set Aside Hearing and as of 25 June River Ridge Recycling confirmed that they would concede the Set Aside Hearing and would withdraw their services to Council from 30 June. The Director advised that this had allowed Council to award the Residual Waste Contract to Regen from 1 July 2018 for a five year period.

The Director of Environment and Property advised that River Ridge can still pursue its claim against Council but that this case will be weakened due to conceding the Set Aside Hearing.

Councillor McGinley declared an interest in this item.

In response to the Chair's question the Director of Environment and Property advised that River Ridge are still pursuing their claim against Council which could be heard towards the end of the year/beginning of next year.

CHAIR _____

DATE _____