

<b>Title of Report:</b>  <b>Hearing in relation to the application for the Grant of an Amusement Permit for 15 William Street, Derry</b>	<b>Officer Presenting: Director of Health and Community</b>  <b>Author: Head of Health and Community Wellbeing</b>
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## **1 Purpose of Report/Recommendations**

- 1.1 To determine an application for the Provisional Grant of an Amusement Permit for premises situate at 15 William Street, Derry, BT48 6EP.

## **2 Background**

- 2.1 Members will recall that, during confidential business, at the meeting of the Health and Community Committee held on Thursday 22 July 2021 an application for the Grant of an Amusement Permit for premises situate at 15 William Street, Derry, BT48 6EP was considered and it was recommended to refuse to grant the application as it did not meet the Council's Amusement Permit Policy. (HC194/21)
- 2.2 This recommendation was subsequently ratified by Council, at its meeting on Thursday 29 July 2021.
- 2.3 Where Council is of a mind to refuse an application for the grant of an Amusement Permit, the Betting, Gaming, Lotteries and Amusements (NI) Order 1985 requires Council to advise the applicant of its intention to do so and to afford the applicant the opportunity of being heard by it, before a final determination of the application is made.
- 2.3 The applicant, Mr. Kevin Daly, was advised of Council's intention to refuse the application in a letter (Notice of intention to refuse to grant an amusement permit) sent by e-mail on 9 August 2021. (Appendix 1)

## **3 Key Issues**

- 3.1 On 11 August 2021 Mr. Daly confirmed, by e-mail, his intention to appeal against Councils' decision to refuse to grant the amusement permit and his intention to appear at the hearing.
- 3.2 In his e-mail, Mr. Daly also expressed his desire for a representative to attend the hearing. (Appendix 2).

- 3.3 Members will note that the Order requires that where the applicant informs the council in writing of his desire to show cause, in person or by a representative, why the application should not be refused, the council shall, before so refusing, afford him an opportunity to do so.
- 3.4 In consequence, Council is affording Mr. Daly and/or his representative to attend the hearing in order to make the case as to why the permit should not be refused.
- 3.5 Members will recall that two persons had objected to the grant of the permit on the grounds that there are, in their opinion, sufficient amusement arcades in the city and district already.
- 3.6 An invitation to be heard by Committee has been extended to both individuals, so that they may make their case for opposing the application.
- 3.7 Members will recall that Council adopted an Amusement Permit Policy in March 2019, which is "intended to serve as a guide for assessing applications for amusement permits by the Council's Health and Community Committee".
- 3.8 Appendix 3 provides a summary of the relevant considerations pertaining to this application, in accordance with the policy, in relation to both the statutory requirements under relevant legislation and the suitability of the proposed location, and is intended to assist members when determining the application.
- 3.9 Members are reminded that Council may depart from the policy where it appears appropriate or necessary and the exceptional rationale for deviation is clearly presented.
- 3.10 Following consideration of the case made in support of and/or opposing the application, should Committee be of a mind to grant the application, the permit will be issued under the condition that: "the premises are not to be used for an unlawful purpose or a resort of persons of known bad character".
- 3.11 In addition, because under 18 year olds must not have access to premises or parts of premises in which £25 prize machines are operated, a permit for the purposes of Article 108 (1) (ca), as has been applied for in this case, will be subject to mandatory conditions, designed to ensure that under 18 year olds do not gain access to restricted premises or parts thereof.
- 3.12 The permit may also be subject to discretionary conditions outlined in Article 118 of the Order relating to the illumination of the premises, advertising of, and window displays on the premises and the display of information notices.

- 3.13 If, Committee refuses to grant the application, or determines to grant the application subject to the discretionary conditions, Council must serve notice of the decision on the applicant informing him of his right to appeal, within 21 days from the date on which notice of the decision is served on him, to the county court.
- 3.14 The decision of a county court on any such appeal will be final, and Council would be required to give effect to that decision.
- 3.15 Members are reminded that in determining this application, Committee is exercising its discretion and must be mindful of the requirements that apply when a local authority is exercising its discretion (as well as human rights considerations), as summarised in Appendix 4.

## **4 Implications**

### **Equality, Rural Needs, Climate Change and Data Protection**

- 4.1 There are no related implications.

### **Financial, Legal, HR, Improvement and Other**

- 4.2 There are no financial implications arising from this report; however, there would be financial costs associated with any subsequent appeal made by the applicant to the County Court

## **5 Recommendations**

- 5.1 Having regard to the representations heard, the Committee may:
- i. grant the application;
  - ii. grant the application subject to the discretionary conditions, such as –
    - that the premises are illuminated in the manner specified by the council; or
    - that advertising of, and window displays on, the premises are in the form specified by the council; or
    - that such notices are displayed and such information given on the premises as the council specifies in relation to any condition to which the amusement permit is subject; or

iii. decide that the application should be refused

5.2 If, Committee decides that the application should be refused or granted subject to the discretionary conditions, notice of its intention to so refuse or grant must be served on the applicant, informing him of his right to appeal within 21 days from the date on which notice of the decision is served on him, appeal to the county court.

### **Background Papers**

Appendix 1: Notice of intention to refuse to grant an amusement permit

Appendix 2: E-mail from applicant confirming intention to appeal decision

Appendix 3: Key considerations in relation to the suitability of the location

Appendix 4: Considerations when Exercising Discretion and Human Rights Issues