Neutral Citation No: [2022] NICty 4 *Judgment: approved by the court for handing down (subject to editorial corrections)**	*Ref:* **[2022] NICty 4** *ICOS No:* *Delivered:* **21/10/2022**

IN THE COUNTY COURT IN NORTHERN IRELAND
BEFORE THE COUNTY COURT JUDGE

And in the matter of a Statutory Appeal pursuant to The Houses in Multiple Occupation Act (Northern Ireland) 2016

BETWEEN: **JONATHAN MURRAY** **Appellant**

-and-

BELFAST CITY COUNCIL **Respondent**

DECISION

HIS HONOUR JUDGE DEVLIN

THE CURRENT APPEAL

[1] This matter arises in connection with the coming into force and operation of The Houses in Multiple Occupation Act (Northern Ireland) 2016 ('the 2016 Act'). The appeal is one made pursuant to section 69 of the 2016 Act.

[2] The 2016 Act, which came into force in April 2019, introduced a new regulatory scheme for the licensing of residential premises lawfully entitled to operate as what are known as 'Houses in Multiple Occupation' ('HMOs'). Part of the effect of the 2016 Act was to transfer responsibility for the regulation and licensing of HMOs from the Northern Ireland Housing Executive ('NIHE') with whom it had previously rested, to local Councils. The previous statutory regime for the regulation of HMOs in Northern Ireland most recently had operated on foot of the Housing (Northern Ireland) Order 2003, which had vested responsibility for such regulation in the NIHE.

[3] The current appeal concerns property situate at and known as Flat 2, 26 Lawrence Street, Belfast ('the subject premises'). The Court understands that at that

address there are two flats, known as Flat 1 and Flat 2 respectively. The current appeal concerns only the latter of the two flats, which contains the subject premises.

[4] On 1 July 2021, the respondent having previously received and considered an application made on behalf of the appellant for the issue of an HMO licence in respect of the subject premises, arrived at the decision to refuse the licence. That decision was then notified to the appellant in writing on 2 July 2021. In this current appeal, the appellant now appeals against that refusal.

OUTLINE OF BACKGROUND FACTS AND CIRCUMSTANCES

[5] In the period prior to April 2019 and the coming into force of the 2016 Act, the appellant was not the owner of the subject premises. It does not appear to be in dispute that in advance of 2019 the subject premises had been duly registered with the NIHE as an HMO. The appellant has stated that in advance of the completion of his purchase of the subject premises he had seen a registration certificate with the deeds which had indicated that there was NIHE certification in place until July 2021. The appellant completed his acquisition of the subject premises on 31 May 2019. However, it would appear that this acquisition transaction had proceeded to completion without the appellant being either personally aware or made aware of the coming into force, during the previous month of April 2019, of the 2016 Act, or of the impact which the coming into force of section 28 of that Act would have upon any HMO licence previously attaching to the subject premises. Section 28 provides as follows:

> *Change of ownership: effect on licence*
>
> *28 – (1) A licence may be transferred to another person only in accordance with this section.*
>
> *(2) Accordingly, except as set out in subsection (3), where –*
>
> *(a) there is a transfer of ownership of a licensed HMO,*
>
> *(b) as a result of the transfer there is a new owner (or more than one), and*
>
> *(c) no person who was a licensee before the transfer continues to be an owner after it, the licence ceases to have effect on the date of the transfer.*
>
> *(3) If –*
>
> *(a) there is a transfer of ownership of a licensed HMO, and*

> *(b) before the date of the transfer, the proposed new owner (or any of them) applies for a licence in respect of the HMO (a "new licence"),*
>
> *the licence which is already in effect in respect of the HMO ("the existing licence") is to be treated as being held, from the date of the transfer, by the person or persons who made the application for the new licence ("the transferee").*

In the present case, it is not in dispute that as and from the date of the coming into force of the 2016 Act in April 2019, unless in advance of the date of the transfer to him the proposed transferee of an HMO licence had already made application for the issue to him of a new licence, then upon the completion of the transfer any existing HMO licence attaching to the premises in sale would automatically cease to exist by operation of law. Nor is it disputed that so far as the subject premises are concerned, the impact of the coming into force of the 2016 Act was such that upon the transfer of ownership to those premises being completed, which it was as at 31 May 2019, the HMO licence previously attaching to the premises ceased to exist. The appellant unfortunately appears in the period immediately before and after his acquisition of the subject premises on 31 May 2019 to have remained completely unaware of this, and for a period of time he appears to have continued to use the subject premises as an HMO without appreciating that its previous HMO licence had since ceased to exist.

[6] Nor is it disputed that had it not been for the transfer of ownership of the subject premises to the appellant at the end of May 2019, the existing HMO licence attaching to the subject premises would have continued in existence, up until July 2021.

[7] The appellant ultimately made an application to the respondent on 12 February 2021, and duly paid the requisite fee. The Court has been informed that such applications are made via an online portal. The appellant says that since he was unaware of the impact of section 28, he believed this to be no more than an application for the renewal of a subsisting HMO licence. It is clear that he was then written to by the respondent by letter dated 12 February 2021, advising him of the need for the property to be inspected; he was advised of a forthcoming inspection date on 24 February 2021, and was asked to provide plans of the property at that inspection. The appellant also made application for the grant of a Temporary Exemption Notice under section 15 of the 2016 Act, and this was granted on 23 February 2021. Subsequently, over the next seven weeks or thereabouts various additional supporting documents (such as electrical condition reports, fire alarm, emergency lighting, gas safety certificates, and the like) all appear to have been requested of the appellant, via the online portal on 1 and 12 April 2021, and after some delay these were all duly provided by him through his managing agent.

[8] Ultimately on 16 April 2021, the respondent wrote to the appellant informing him that further to the submission of documentation, all was now satisfactory at the

date of that letter. The letter also stated that his application was received on 12 February 2021. It went on to state that the Council had to decide, following a final review of his application, whether to grant or refuse his application for an HMO licence, and he was advised that he should receive confirmation if his property had been granted a licence on or before 16 July 2021.

[9] On 21 May 2021, the respondent wrote to the appellant, under para 9 of Schedule 2 of the 2016 Act, formally putting him on notice that the Council was proposing to refuse the application. A Schedule attached to the notice stated the reasons for the proposed decision. The reason given was that the Council was not satisfied that the granting of the licence would not result in overprovision of HMOs in the locality in which the living accommodation is situated. The notice further advised the appellant that if he wished to make representations in relation to the proposed decision he should do so in writing within a 14 day period.

[10] On 2 July 2021 the respondent refused the appellant's application on the ground that it could not be satisfied that the granting of the licence would not result in overprovision of HMOs in the locality in which the accommodation is situated. It is against this decision that the current appeal is directed.

GROUNDS OF APPEAL

[11] In the Notice of Appeal lodged herein on 28 July 2021, the following grounds were specified, namely:

(a) The respondent failed to decide whether to grant or refuse the appellant's application for a HMO licence before the end of the period of 3 months beginning with the date on which the Council received the application (12 February 2021). It also failed to make an application to the court to extend the time period. In those circumstances, pursuant to Schedule 2 para 12 of the Houses in Multiple Occupation Act (Northern Ireland) 2016 the appellant was entitled to be treated as having been granted a licence in the terms applied for.

(b) In refusing the application, the respondent failed to apply its own policy, namely:

> *''That all new applications received up to and including 1st March 2021 where the parties 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.".*

(c) The appellant had a substantive legitimate expectation that if an application for a HMO licence in respect of property which had previously operated as a HMO and had the benefit of planning permission and/or a certificate of lawful use or development was received by the respondent up to and including 1 March 2021, it would not be considered to result in overprovision. The appellant's application was received by the respondent on 12 February 2021. The premises had previously operated as a HMO and further had the benefit of a certificate of lawful use or development. In refusing the application on the grounds that it would result in overprovision, the respondent unlawfully frustrated the appellant's legitimate expectation.

(d) In refusing the application on the basis that it was not satisfied that the granting of the licence would not result in overprovision of HMOs in the locality in which the living accommodation is situated, the respondent erred in law.

[12] At the hearing before this Court, which took place on 17 September 2022, the appellant, for whom Mr Donal Sayers KC and Ms Lara Smyth BL appeared, conjoined the grounds of appeal outlined at (b) and (c) above into a single set of submissions. Mr Andrew Brownlie BL appeared on behalf of the respondent.

[13] An initial undated skeleton argument was lodged herein on behalf of the appellant. The respondent's skeleton argument dated 17 December 2021 followed thereafter. In his original skeleton argument, the appellant had not sought to proceed with or rely upon the first ground of appeal as set out in the Notice of Appeal and as set out at para 11(a) above, and indeed had indicated that the appellant would no longer be proceeding with this ground of appeal. However, in a subsequent skeleton lodged on 14 March 2022, the appellant sought to return to and now place afresh reliance upon this first ground of appeal. An additional skeleton from the respondent addressing this ground of appeal was then served and lodged on 7 April 2022. I am grateful to counsel for their helpful written and oral submissions.

LEGAL FRAMEWORK

[14] In the 2016 Act, the making and granting of applications for an HMO licence is governed by section 8, which provides as follows:

> *'8 – (1) An application for an HMO licence is to be made to the Council by the owner of the living accommodation in question.*
>
> *(2) The Council may grant the licence only if it is satisfied that –*
>
> *…….*
>
> *(d) the granting of the licence will not result in overprovision of HMOs in the locality in which the*

living accommodation is situated (see section 12); …..

(3) Schedule 2 makes provision about the procedural requirements relating to an application for an HMO licence.'

[15] As can be seen from the above, the general rule is that a Council may upon the receipt of an application only grant an HMO licence if it is satisfied that to do so would not result in overprovision of HMOs within the locality in which the accommodation is situated. Section 12 of the Act then goes on to provide details as to the various factors which the Council is then required to have regard to whenever addressing the issue of potential overprovision:

12 – (1) In considering whether the granting of a licence will result in overprovision in a locality for the purposes of section 8(2)(d), 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.

(2) It is for the Council to determine the localities within its district for the purposes of this section.'

[16] However, section 20 of the 2016 Act goes on to make it clear that in the case of an application for the renewal of a subsisting HMO licence, as opposed to an application for the grant of a new HMO licence, the issue of overprovision as set out in sections 8(2)(d) and 12 of the statute does not arise. In this regard, section 20 of the 2016 Act provides for renewal applications as follows:

'20 – (1) Where the holder of an HMO licence makes an application in accordance with this section for it to be renewed, the Council may renew the licence.

(2) An application to renew a licence must be made before the licence ceases to have effect.

(3) The provisions of this Part apply to applications to renew a licence (and decisions on such applications) as they apply to applications for a licence (and decisions on such applications).

(4) But the following provisions do not apply to applications to renew –

(a) sections 8(2)(a) and 9 and paragraphs 5 to 7 of Schedule 2 (breach of planning control);

(b) sections 8(2)(d) and 12 (overprovision).'

[17] Schedule 2 of the 2016 Act then sets out the procedural requirements surrounding the submission, consideration and granting of an HMO application. Paras 1 and 12 of Schedule 2 appear to be of particular relevance to the current matter, and provide as follows:

'1 – (1) An application for an HMO licence must be in writing and in such form as the Council may specify by general notice.

(2) The application must include the following information –

(a) the address of the living accommodation in question,

(b) if the owner is an individual, the owner's name and address,

(c) if the owner is a body, the information set out in sub-para (3),

(d) if there is to be a managing agent of the HMO –

(i) if the agent is an individual, the agent's name and address, or

(ii) if the agent is a body, the information set out in sub-para (3),

(e) the name and address of any person (other than the owner) who has a relevant interest in the HMO …..

(f) the maximum number of persons who it is proposed will occupy the accommodation as their only or main residence at any one time,

(g) any other information which the Department may by regulations require to be set out in such applications, and

(h) any other information which the Council may specify by general notice.

(3) ……

(4)…….

…….

…….

Time limit for determining application

12 – (1) The Council must decide whether to grant or refuse an application for an HMO licence before the end of the period of three months beginning with the date on which the Council received it.

(2) A court of summary jurisdiction may extend the period mentioned in sub-para (1) in the case of a particular HMO application.

(3) An order under sub-para (2) is to be made on an application made by the Council before the end of the period mentioned in sub-para (1).

(4) The applicant for the licence is entitled to be a party to any proceedings on an application under sub-para (3).

(5) The decision of a court on an application under sub-para (3) is to be final.

(6) If the Council does not determine an application for an HMO licence before the end of the period mentioned in sub-para (1) (or that period as extended), the applicant is to be treated as having been granted a licence in the terms applied for.

(7) Sub-para (6) does not prevent the Council from varying or revoking a licence which is treated as having been granted in accordance with that sub-para.

As to the terms and conditions of such an HMO licence deemed to arise by virtue of para 12(6) of Schedule 2 to have been granted in default of the timeous determination by a Council of an HMO application previously submitted to them, section 19(4) of the 2016 Act provides that:

'[4] Such a licence –

(a) has effect from the date by which the Council was required by that paragraph to determine the application, and

(b) has effect for one year.'

[18] Section 67 then makes provision for a range of appeals from decisions of the Council to the County Court. As to the nature and extent of the powers of the County Court upon the bringing of such an appeal, these are dealt with at section 69(1) of the 2016 Act:

'69 – (1) An appeal under section 67 –

(a) is to be by way of a re-hearing, but

(b) may be determined having regard to matters of which the Council were unaware.

(2) The court may confirm, reverse or vary the decision of the Council.

(3) If the appeal is against a decision to refuse an application, the court may direct the Council to grant the application in such terms as the court may direct.'

[19] As stated above, under para 1(2)(h) of Schedule 2 to the 2016 Act, and as explained by section 87(1) of the Act itself, a Council is permitted by means of what is described as a 'general notice' to add to the list of mandatory 'information' which must be included with an application for an HMO licence. The Court understands that the respondent has by means of such '*general notice*' added in no less than 12 specified documents or categories of document, which are as a result all required to be submitted by an applicant for an HMO licence, as part of the requisite supporting 'information' which must be included in such an application, as referred to in para 1(2) of Schedule 2. These documents include such items as: an electrical installation condition report, fire installation and commissioning certificates, emergency lighting certificates, gas safety certificates and the like.

EVIDENCE ADDUCED

[20] The Court had evidence adduced before it in the form of two affidavits from the appellant himself sworn herein on 3 September 2021, and on 8 October 2021. Replying affidavits on behalf of the respondent were sworn herein by Kevin Bloomfield, the respondent's manager of its NI Houses in Multiple Occupation Unit on 21 September 2021 and on 5 April 2022.

CONSIDERATION

[21] Insofar as possible, the Court will endeavour to consider each of the three grounds of appeal relied upon by the appellant separately and in turn. Four grounds of appeal were originally relied upon, but as already stated, during the hearing before the Court grounds (b) and (c) were, correctly in the assessment of the Court, dealt with by both sides as essentially as conjoined grounds. In his first ground of appeal, the appellant contended that the respondent failed to decide whether to grant or refuse the appellant's application for a HMO licence before the end of the period of three months beginning with the date on which the Council 'received' the application (12 February 2021). It also failed to make an application to the court to extend the time period. In those circumstances, pursuant to Schedule 2 para 12 of the Houses in Multiple Occupation Act (Northern Ireland) 2016 the appellant it is argued was entitled to be treated as having been granted a licence in the terms applied for. The central proposition upon which this ground of appeal rests is that in this case, the subject application for the issue of a new HMO licence was not only submitted by the appellant on 12 February 2021 but was also duly 'received' by the respondent on the same date namely 12 February 2021. In other words, this ground of appeal rests upon the proposition that it was as and from 12 February 2021 onwards, and not from any subsequent or other date, that time began to run for the purposes of the 2016 Act, and in particular for the purposes of para 12(6) of Schedule 2 of the Act. On that basis, so the appellant contends, whenever three months after that date, namely as at 12 May 2021, the respondent had not as yet determined the appellant's application, then pursuant to the operation of para 12(6) of Schedule 2 to the 2016, Act the appellant became entitled to be treated as having been granted an HMO licence in the terms for which he had previously applied.

[22] In support of this line of argument, the appellant places reliance upon each of the following. The original application was lodged via the respondent's website on 12 February 2021, with the requisite application fee having been paid at that time. That is not in dispute. Subsequently, additional information was sought by the Council from the appellant on foot of correspondence dated 15 February and 12 April 2021; that is not disputed either. Then, in an open letter dated 16 April 2021, the Council's Technical Officer informed the appellant that:

> 'Further to the submission of documentation, I can confirm that at the date of this letter all are satisfactory. *Your application was received on 12 February 2021*.' [italics added].

The appellant points to the fact that no application was ever made by the respondent to the Magistrates' Court, for an extension of the three month period of time permitted to it respect of its consideration and determination of the appellant's application, as the respondent was entitled to do pursuant to para 12(2) of the 2016 Act. The appellant points to the fact that the licence application was not finally determined by the respondent until 1 July 2021, with the outcome being notified to the appellant on the following day, and contends that as of 12 May 2021, three

months as and from 12 February 2021, being the date of receipt of the application by the respondent, the respondent was obliged in the circumstances to regard the appellant's application for an HMO licence to have been granted, as and from that date, and pursuant to section 19(4)(b) granted for the period of one year.

[23] Counsel for the appellant pointed out that in its letter to the appellant dated 16 April 2021, the respondent at the same time as it confirmed with reference to the submission of documentation that all was now satisfactory, had also made it clear to the appellant that any confirmation of the grant of an HMO licence would be notified to him on or before 16 July 2021, that is three months from the date of the letter itself. Counsel for the appellant contended that this approach amounted to a unilateral distinction being drawn on part of the respondent as between the date upon which an application might be lodged and received, and the date upon which that application might subsequently be deemed by the Council to be valid; that this approach was extraneous and alien to the operation and outworkings of the 2016 Act, and was not provided for, contemplated or permitted by the Act itself.

[24] He further contended that upon the ordinary and natural meaning of the term *'received'* as incorporated within the wording of para 12(1) of Schedule 2, (in the absence of any application for an extension) time in the form of the three month period permitted to a Council for the determination of an HMO licence application, should properly be construed to run from the date upon which any such application might be submitted to and accordingly received in by the Council by means of its online portal, and that there was no proper basis in law for any subsequent or other date to be found to be that from which such time might begin to run.

[25] This line of argument is, perhaps not surprisingly, strenuously resisted by the respondent. The respondent contends that upon the true construction of the 2016 Act, and in particular para 12 of Schedule 2, time for the purposes of the three month period permitted for the determination of an application for an HMO licence does not begin to run until such time as a complete and accordingly valid application, namely one meeting the requirements of the statute, has been submitted by an applicant and received by the Council. In the particular facts and circumstances of the present case, the respondent contends that since it was not until 16 April 2021 that the appellant finally managed to submit to the Council all of the outstanding information and documentation which had since February been sought from him, and that it is only from that date that the three month period should begin to run, rather than from 12 February 2021 the date of the application's lodging. On that basis, the respondent contends that its decision not to grant to the appellant the HMO licence sought by him being arrived at, as it was, on 1 July 2021 and notified as it also was to the appellant on the following day, was lawfully arrived at well within the three month period running from 16 April 2021, and that accordingly no question of any presumed or deemed grant of a licence arises.

[26] In support of this, counsel for the respondent drew the attention of the Court to the fact that it is Schedule 2 to the 2016 Act which expressly sets out the various

procedural requirements relating to applications submitted for an HMO licence, and that in para one of that Schedule it is provided that such an application '*must*' be in writing, and also be in such form as to Council may specify by general notice, and that it is then further provided that an application '*must*' also contain a significant number of specific pieces of information, which are all then in turn outlined between para 1(2)(a) to (g) inclusive, together with:

> (g) any other information which the Department (that is the Department of Communities) may by regulations require to be set out in such applications, and
>
> (h) any other information which the Council may specify by general notice.

In other words, pursuant to the wording adopted in the 2016 Act, in order to initiate an application for the grant of an HMO licence, an individual is not only required to submit the necessary form of application by means of the online platform provided, but he '*must*' also, in addition, supply to the Council a not insignificant number of further pieces of information, as variously listed between para 1(2)(a) to (g) inclusive, and both the Department and the Council itself are at liberty, should they so wish to add in from time to time further examples of requisite supporting information to this list, either in the case of the Department means of regulations or in the case of the Council by means of a general notice. The 2016 Act appears to impose no specific requirement to the effect that this additional requisite information, or indeed any of it, needs to be provided by the party applying either at the same time as the original application itself, nor indeed within any specific additional period of time after the original application may have been submitted.

[27] Other than the wording of para 12 of Schedule 2 itself, the 2016 Act does not appear to provide any clear assistance as to when time begins to run for the purposes of the three month time limit within which a Council is required to decide to grant or refuse an application for an HMO licence. Para 12 merely says that time, so far as such an application is concerned, begins with the date on which the Council 'received it'. The appellant says this should be taken to be the date upon which the application is originally lodged. The appellant further contends that this original lodging date should be the date from which time begins to run so far as the operation of the three month period is concerned, irrespective of whether or not the original application form, as lodged, did include all of the necessary information, details or documents.

[28] As against this, the respondent says that the three month period should instead be construed to run only from the date upon which not simply the basic form of the application itself, but also all of its requisite supporting 'information', including all requisite documentation, has been duly provided by the applicant to the Council in support of the contents of the application. The respondent contends

that if, right from the outset, the application form as lodged with the Council is found to include all of the necessary supporting 'information', then time for the operation of the three month period will run from date the application is originally presented, but not otherwise.

[29] On balance, this Court is not at all persuaded that the intention of the legislature is ever likely to have been that for the purposes of para 12 of Schedule 2 the three month time limit should be taken to run from the date upon which the application is originally lodged, as contended for by the appellant herein. The clear rationale for the legislation requiring the information set out in the long list appearing between sub-paras 2(a) and (h) of para 1 of Schedule 2 to be included in an HMO licence application is that such information is considered to be not simply important for a Council to have in its possession, but also important for the council to be able to both have regard to and also to take account of in its consideration and determination of the application itself. The Court notes that just in the same way as sub-para 1(1) of Schedule 2 sets out to specify the requisite form of an HMO licence application, namely that it must be in writing and be in such form as the Council may specify by general notice, equally sub-para 1(2) sets out to specify the requisite content of an application, namely that the application must include the specified information. It would not make sense for the legislature to require an HMO licence application form to contain a long list of specified essential information, and yet at the same time to somehow expect the Council, in advance of the receipt of some or even all of that to nevertheless set about its consideration and determination of the application.

[30] On the basis of the construction suggested on behalf of the appellant, all that the party applying would need to do would be to decide to submit the most basic form of an application, for example to be in written form and accompanied by the requisite fee, but to decide for whatever reason not to submit either all or any of the long list of additional essential accompanying information set out at sub-para 2(a) to (h) inclusive. In such circumstances such an applicant would be at liberty to expect the Council, somehow or other, to set about its substantive consideration and determination of a palpably incomplete application, even though almost all of the information needed by the Council to enable it to do so would be absent, and if the Council for whatever reason were to fail to complete its consideration, and as a result to fail to determine his application within three months from the date of its original submission, the applicant would then become entitled to the benefit of a deemed licence under para 12(6) of Schedule 2. In the assessment of the Court that is unlikely to have been the intention of the legislature.

[31] The Court can also readily see how such the suggested method of construction put forward on behalf of the appellant, if adopted by the Court, could end up operating manifestly unfairly against a bona fide applicant, who might be awaiting the late provision of information from a third party source. Consider for example the situation of a bona fide applicant for an HMO licence, who having submitted his application together with almost all of the requisite supporting

information some weeks in advance might still await, say from his managing agent, the provision of some requisite but relatively unimportant information not within the applicant's own personal knowledge, such as for example the address of a member of the managing agent's staff closely involved in the management of the property in question (vide para 1(3)(c) of Schedule 2). Since there is no provision within para 12(3) for the three month time limit to be extended, save and except on the application of the Council alone, then on the basis of the construction put forward on behalf of the appellant a wholly innocent and compliant applicant could face the risk of an otherwise meritorious application being determined against him and refused by the Council, lest the failure to obtain the outstanding information within time should end up resulting in the deemed grant of a licence under para 12(6) at the expiry of the three month period from the date upon which the application was first lodged. That also seems unlikely ever to have been the intention of the legislature herein.

[32] The Court also finds confirmation of the correctness of its approach to this issue of interpretation of those provisions in the 2006 Order relevant to the running of time for the purposes of the three month time limit imposed upon the determination of applications in the wording of the guidance provided to Councils by the Department for Communities ('the Department') being the relevant governmental department with statutory responsibility for housing in Northern Ireland. Before looking at the contents of such guidance, the Court needs to be satisfied that in connection with its consideration and determination of the issue of interpretation which has here arisen in connection with the 2006 Order it is permissible for some regard to be had to the contents of such departmental guidance. The use that may be made by the courts of such guidance as an aide to construction was set out by Lloyd Jones J as he then was in *Ellis –v- Bristol City Council* [2007] EWCA Civ 685 in the following terms:

> *'It is, of course, for the courts and not the executive to interpret legislation. However, in general, official statements by government departments administering an Act or by any other authority concerned with an Act, may be taken into account as persuasive authority on the legal meaning of its provisions.'*

These observations are echoed in the text of Bennion on Statutory Interpretation, 8th edition, 2020 at p765:

> *'In the context of statutory construction guidance has no special legal status. The judiciary not the executive determine the meaning of legislation. Guidance that tries to explain what the legislation means will be given no more weight than the quality of any reasoning contained in it deserves. If it is wrong the courts will not hesitate in saying so. But where guidance is consistent with the view that the court is in any event inclined to adopt, the court may find it of some reassurance'.*

[33] That is the position here. The guidance in question takes the form of statutory guidance issued by the Department pursuant to section 85(1) of the 2016 Act. Furthermore, under section 85(2), any Council exercising its functions under the 2016 Act is specifically obliged to have regard to the contents of any such Departmental guidance. The guidance is entitled 'Guide to the Licensing of Houses in Multiple Occupation in Northern Ireland: Guidance for Local Government – April 2019'. In relation to the issue of the running of the three month time period permitted to a Council for its consideration and determination of an HMO licence application, para 3.8.1 states as follows:

> *'The Council must process a licence application within a reasonable time. Authorities should aim to determine applications before the end of the period of three months beginning with the date on which the Council received it. The application is only valid if the form is completed correctly. Full payment is made and the required supporting documents are included……'*

[34] The respondent itself has issued its own 'Guide to Northern Ireland Houses in Multiple Occupation'. At section 3.1 of that written guide, under the heading 'Applying for an HMO licence' the respondent's guide states that:

> *'If you don't have all the necessary documents, you should submit your application and provide the remaining documents later. Please be aware that the application will not be considered until all the documentation has been considered.' (underlining added).*

Further on in the same guide, at section 3.3.11, under the heading 'Valid Application (Supporting Documentation)' the respondent states as follows:

> *'Pursuant to section 87(1) General notices of the 2016 Act the following documents as listed in point 1 – 12 are required under para 1(1) or 1(2)(h) of Schedule 2 before an application is considered valid.'(underlining added).*

Section 3.1.11 then proceeds to set out the 12 documents required by it by means of its general notice to be provided in conjunction with any HMO licence application being submitted to it.

[35] In his oral submissions, Mr Sayers KC sought to draw the attention of the Court to a potential tension as between the two terms 'information' and 'documentation' as they appear on the one hand in the 2006 Order, and on the other hand in the guidance material issued by the Department and also by the respondent itself. I do not consider that there is here any issue of substance. Para 1(1) of Schedule 2 imposed the original statutory requirements for an application, namely that it should be in writing, in such form as the Council should by general notice

specify, and that it should also contain the 'information' set out between paras 1(2)(a) to (g) inclusive. In accordance with para 1(2)(h) the respondent or any Council was at liberty to add as additional essential material for an application such further 'information' as it might specify, again by general notice. The respondent duly did so, and added to the list of essential 'information' the list of 12 documents set out at para 3.1.11 of its general notice, as in the view of the Court it was fully entitled to do. In the assessment of the Court the broader term 'information' encompasses the narrower term 'documents' and accordingly a Council is fully entitled under para 1(2)(h) to require that additional 'documents' be submitted with an HMO licence application in addition to the other 'information' already required under para 1(2)(a) to (g) inclusive.

[36] In summary therefore, the Court is firmly of the view that the three month time limit within which an application for an HMO licence should be considered and determined by a Council does not begin to run until such time as a fully complete licence application has been received by the Council, and that a licence application shall only be considered complete whenever all of its required supporting 'information' shall have been received by the Council, either at the date of the application's original lodging of the application or indeed thereafter, including such documents as may have been specified by a particular Council as being required by it under para 1(2)(h) of Schedule 2 to the 2016 Order.

[37] On that basis, the Court finds that in this case the respondent was fully entitled in the case of the appellant to consider that his fully complete application, together with all of its requisite supporting information and documentation was only finally been received by the Council at 16 April 2021, also to regard the application as only being valid at that date, and accordingly to regard the three month time limit as only beginning to run from that date onwards, rather than from 12 February 2021 as the appellant has herein sought to contend. The fact that in an open letter dated 16 April 2021, the Council's Technical Officer, Mr Doole, informed the appellant that his application was 'received' on 12 February 2021 the Court does not ultimately consider to be of any significance, in that it considers the clear intention of the author of that letter was merely to use the term 'received' according to its usage in common parlance, namely physically received, rather than according to any technical or legal meaning concerning validity. That is emphasised by the fact that in his earlier letter dated 12 April 2021, Mr Doole had explained, correctly in the assessment of the Court, that until documentation which was still outstanding from the appellant at that time had been duly received by the Council, his application could not be considered valid.

[38] It also follows from the above that the appellant was never on the particular facts and circumstances of this case entitled to be treated as having been granted a deemed licence in the terms applied for. On that basis, the Court must reject the first ground of appeal as relied upon by the appellant herein.

[39] In the second ground of appeal relied upon herein by the appellant, it is contended that in refusing the appellant's HMO licence application, the respondent failed to apply its own interim policy. The policy relied upon is said to have been as follows:

> *'That all new applications received up to and including 1st March 2021 where the parties 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.".*

This ground of appeal further argues that the appellant accordingly had a substantive legitimate expectation that if an application for a HMO licence in respect of property which had previously operated as a HMO and which had the benefit of planning permission and/or a certificate of lawful use or development was to be received by the respondent up to and including 1 March 2021, such an application would not be considered to result in overprovision. It does not appear to be in dispute that the subject premises had previously operated as a HMO and it is also accepted that they had the benefit of a certificate of lawful use or development. This ground of appeal contends that in refusing the application on the grounds that it would result in overprovision, the respondent unlawfully frustrated the appellant's legitimate expectation.

[40] The Court considers that this second ground of appeal can be dealt with fairly quickly, connected as it is in relation to the issue of the date of receipt of an application with the first ground of appeal already considered and rejected above. In essence, it is here contended on behalf of the appellant that there was at the time of the appellant application in existence within the respondent a declared internal policy to the effect that all new HMO licence applications received up to a particular date, where the relevant properties had previously operated as an HMO, and where they also had the benefit of planning permission and/or a certificate of lawful use or development, would not be considered to result in overprovision. Accordingly, it is argued, the appellant ought properly to have been entitled to the benefit of this policy. The 'policy' in question is one which is said to have arisen from the passing of a proposal passed by the respondent's Licensing Committee at its meeting on 20 January 2021. The relevant Council minutes reveal that at that meeting, the Licensing Committee, by a majority vote, carried the following proposal;

> *'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'.*

[41] In relation to this ground of appeal, the respondent contends that there never was any such policy or interim policy as contended for, but merely an agreed approach taken by councillors in relation to a very limited number of HMO properties where their owners had not applied to renew their licences because of a misconception on their part that they needed planning permission or a CLUD certificate before doing so, and the respondent says that the appellant and his application never fell into this category of case. That may or may not be correct, but in the assessment of the Court it is not necessary for that issue to here be determined by the Court because it is otherwise apparent that upon any assessment this appellant is never going to be entitled to benefit from whatever may have been approved and passed by the respondent's Licensing Committee on 20 January 2021. There are two reasons for this. The first arises out of the wording of the proposal which the Licensing Committee actually managed to pass on 20 January 2021, and second relates to the date upon which the appellant's HMO licence application, together with all of its necessary supporting information including documentation actually came to be validly received by the respondent. The Court has already found that the appellant's HMO licence application together with all its necessary supporting information and documentation only ultimately came to be validly '*received*' by the respondent on 16 April 2021. It cannot therefore benefit from any policy or interim policy which, even on the appellant's case, would only ever have applied to applications received up to and including 1 March 2021.

[42] In any event, the proposal sought to be relied upon by the appellant did not in fact ever provide for what the appellant says it provided for. The proposal which was actually passed on 20 January 2021 did not ever refer to applications '*received up to and including 1 March 2021'*. Instead, as the relevant minute of the meeting indicates, it referred to applications '*due to expire 1 March 2021'* whatever that may mean, or have been intended to mean, if indeed anything. The documentation considered by the Court does certainly suggest that the use of the words '*due to expire 1 March 2021'* may have been inserted into the relevant proposal as the result of some administrative or typographical error, but be that as it may, in the current appeal the appellant can scarcely seek to rely upon a supposed policy introduced by means of a proposal the wording of which was never actually passed by the respondent's Licensing Committee. One can scarcely have the legitimate expectation that a Council will act in accordance with the wording and substance of a policy which it never formally approved, introduced or relied upon. It is a further insurmountable difficulty for the appellant, so far as the second ground of appeal is concerned, that even if the proposal had been passed in the form suggested by the appellant always to have been the intended form, even that form of wording could not in any event assist the appellant in the facts and circumstances of this case, in that his licence HMO application was only '*received* ' in valid form on 16 April 2021, and not on or before 1 March 2021. The second ground of appeal is accordingly also rejected.

[43] In the third ground and final of appeal relied upon, it is contended on behalf of the appellant as follows, namely that in refusing the application on the basis that it

was not satisfied that the granting of the licence would not result in overprovision of HMOs in the locality in which the living accommodation is situated, the respondent erred in law.

[44] Criticism of the respondent's decision to refuse the appellant's application focusses upon the methodology adopted by it to enable it to arrive at the decision to refuse for reasons of overprovision. It is argued that the appellant's application was never considered by the respondent in its full factual context; in particular the fact that the premises had previously benefitted from an HMO licence over many years, and that had it not been for the unfortunate and inadvertent lapse of that certificate caused by the transfer in the ownership of the premises to the appellant, this would have been a relatively simple renewal exercise in which it would not have been open to the respondent to have had regard to the issue of overprovision.

[45] In the assessment of the Court this line of argument is unfortunately misconceived. It is certainly extremely unfortunate that the HMO licence previously attaching to the premises lapsed on 31 May 2021 whenever the appellant completed his purchase of the premises without first having lodged an application to renew the existing licence, which had it not been for the transfer of ownership to the appellant would have continued to operate until its normal expiry date in July of that year. The appellant's undoubted misfortune is rendered all the more apparent when it is understood that had such a renewal application been duly made in advance of the date of completion on 31 May 2021, that it might not in those circumstances, that of a renewal as opposed to a new application, have been open to the respondent to have refused his application on the basis of overprovision. However, it needs to be understood that all of this unfortunate state of affairs appears to have come about not as the result of any capriciousness or unreasonableness on the part of the respondent, but because of a simple albeit significant error on the part of the appellant himself, and/or those advising him. The inevitable result of that unfortunate error, combined with the coming into effect of the 2016 Act the previous month, was that the existing HMO licence upon completion of the transfer of title in the premises to the appellant automatically ceased to exist by operation of law with immediate effect, and the making of a new application for the grant of a new HMO licence under the new legislation became necessary. The Court has certainly not been referred to any provision within the 2016 Act, or indeed elsewhere, or any reported decision which indicates or suggests that where a new licence application has become necessary because of the type of unfortunate set of circumstances which befell the appellant on 31 May 2021, that such an application can lawfully be considered on any basis other than that which governs any other mainstream new grant application. In the factual circumstance of this application, section 8 of the 2016 Act governed the appellant's application, just as it governs any other new application; equally, in the same way as in any other new application section 8(2)(d) meant that so far as the appellant's application was concerned, the respondent would only able to grant it if satisfied that the making of the grant would not result in overprovision of HMO's within the relevant locality.

[46] If the appellant is seeking to suggest that the context, unfortunate background and particular circumstances of the appellant's case, and the way in which what could perhaps have been a renewal application was required by force of circumstances to proceed instead in the form of an application for the grant of a new grant, could in some way lead to his application being dealt with differently, or more sympathetically, or indeed on some other basis than a more mainstream new HMO licence applications, the response from the Court is to say that it has certainly neither seen nor been referred to anything within the 2016 Act which contemplates or even appears to permit such a differential approach being adopted by a Council.

[47] Further and broader criticism is however made of the respondent's use of its own 'Houses in Multiple Occupation (HMOs) Subject Plan for Belfast City Council Area 2015' ('the Subject Plan') in arriving at its decision to refuse the new licence sought by the appellant. It is suggested that the respondent afforded the Subject Plan undue weight, that the respondent regarded its thresholds as binding, and that in doing so the respondent ended up fettering its discretion to determine the appellant's application according to its own individual facts. It is also suggested that the respondent could not rationally have concluded that the grant of a new licence to the appellant for these premises would have resulted in overprovision. All of this the respondent rejects.

[48] The Court has read and examined the Subject Plan, together with those parts of the affidavit evidence adduced on behalf of the respondent which specifically addresses both the Subject Plan and the manner in which the respondent set about its consideration and determination of the appellant's application. In this regard, the Court found particularly helpful paras 24 to 28 inclusive of Kevin Bloomfield's first affidavit herein dated 21 September 2021.

[49] The section of the 2016 Act which sets out how and on what basis a Council must proceed to consider the issue of overprovision is section 12, which provides as follows:

> *'12(1)In considering whether the granting of a licence will result in overprovision in a locality for the purposes of section 8(2)(d), 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 require.'*

The Court has not been referred to any Departmental Regulations made under section 12(1)(c) and accordingly proceeds on the basis that no such regulations have to date been made.

[50] The Subject Plan is not an internal Belfast City Council plan. It is a development plan for the Belfast City Council Area which was prepared by the Planning Service, an agency of the Department of the Environment under Part 111 of the Planning (Northern Ireland) Order 1991. Although the Subject Plan carries the prospective date of 2015, it is a document which dates from December 2008. As para 1.4 of Part 1 of the Subject Plan makes clear, its stated aim was to provide a planning framework for HMO development in general conformity with the Regional Development Strategy in facilitating growth and high quality development throughout the plan area whilst protecting and where appropriate enhancing the natural and man made environment. Within the Subject Plan are set out details of a planning policy termed the Belfast HMO Strategy, the function of which is stated to achieve what is described as a balanced approach between HMOs and traditional residential accommodation. This Strategy is outlined and explained at para 3.2 of the Subject Plan, and claims to be based upon the taking into account of a number of considerations identified as principal issues, and summarised at para 3.1 namely Housing Need and HMOs, Spatial Policy, Balanced Communities, Area Amenity, Physical Infrastructure, Anti-Social Behaviour and Area Management. Part of para 3.2 of the Subject Plan states that future development of HMOs will be curtained in areas where there are currently significant concentrations of such accommodation, particularly in South Belfast, and goes on to state that opportunities to meet the ongoing requirement for HMO accommodation will be met through (a) purpose built student accommodation, and (b) designation of areas where HMO development will be permitted. The Subject Plan then in terms of its approach to the grant of planning permissions going forward differentiated as between on the one hand HMO Policy Areas and Development Nodes, and on the other hand all other areas. Outside of HMO Policy Areas and Development Nodes, planning permission was only to be granted for further HMO development where, as a result, the number of HMOs would not exceed 10% of dwelling units on that road or street. Within each of the 22 HMO Policy Areas, where the number of HMOs had been found already to exceed 30% of all dwelling units, no further HMO development would be permitted until such time as the proportion of HMOs might fall below the 30% figure.

[51] Then at Appendix 3 of the Subject Plan an analysis was set out of the number and percentages of HMOs by Policy Area in the respondent's 22 designated HMO Policy Areas. In those 22 areas, either all or almost all had HMO percentages above 30%; 7 out of the 22 areas had HMO percentages above 50%, and according to the contents of this Appendix HMO Policy Area 2/22 encompassing Botanic, Holylands and Rugby, was the highest out of all of the 22 HMO Policy Areas, with 1,586 HMOs in this area being found among a total number of dwelling units of 2.491, that is a percentage of HMOs of 64%. The Court understands that this is the area within which the subject premises are located. The Court also understands the figures

contained within Appendix 3 came from the 2008 HMO Database maintained by the Northern Ireland Housing Executive.

[52] A number of criticisms are made of the respondent's use of the Subject Plan. Firstly, it is argued that the Subject Plan was a document which pre-dated the 2016 Act, and also one which neither the 2016 Act nor the Department for Communities specifically directed a Council towards, or otherwise endorsed. Those criticisms are in the Court's assessment ill founded. Provided that in taking into account the contents of the Subject Plan in relation to the issue of overprovision, the respondent is acting in accordance with its obligations under section 12 of the 2016 Act, and providing the contents of the Subject Plan are relevant to those obligations, the respondent would appear to be acting lawfully. It is also suggested that the Subject Plan and the HMO percentage thresholds which it contained had been arrived at solely in reliance upon what was described as 'a wider range of planning considerations'. Whilst the Subject Plan is primarily a planning policy document, it did however specifically have regard to issues of both housing need and housing demand as Part 2 of the Subject Plan makes clear. Having considered the contents of the Subject Plan, the Court is on balance satisfied that, pursuant to section 8 of the 2016 Act, it did represent both a relevant and also a proper document for the respondent to have had regard to, and to have taken account of, in connection with its consideration of the issue of overprovision arising in connection with the appellant's application for the new grant of an HMO licence.

[53] It is also argued that the respondent incorrectly treated the Subject Plan and the HMO thresholds which it set out to be binding, and that as a result afforded the Subject Plan undue weight, and also fettered its discretion to deal with the appellant's application on the basis of its own individual facts. Having regard in particular to what Mr Bloomfield has said between paras 24 and 28 of his first affidavit, on the particular facts and circumstances of this case, and on the evidence, the Court has not been persuaded in respect of any of these allegations.

[54] In the assessment of the Court, the evidence does not indicate that the respondent regarded the Subject Plan as being determinative of its decision on the issue of overprovision so far as the appellant's application was concerned; rather the Subject Plan was, correctly in the view of the Court, taken as no more than a starting point for the respondent's consideration of that issue.

[55] Section 12(1)(a) of the 2016 Act requires any Council considering the issue of overprovision to have regard to the number and capacity of licensed HMOs in the locality. In order to do so, a Council will need to be able to access the relevant information and carry out the necessary calculations. At para 3.3 p 32 the Subject Plan had in the context of planning permission applications suggested a formula whereby the level of multiple occupation within any area might be measured. This formula began with the number of HMOs recorded by the NIHE as at November 2004; to that number would then be added the number of HMO development units subsequently approved by the Department, together with the number of extent

permissions for HMO development units, all units being assessed by reference to the Ordnance Survey's Pointer Database.

[56] The Court considers the use of such a formula both rational and reasonable, and sees no good reason as to why such a formula could and should not equally well be capable of use in connection with the assessment of the numbers of HMO properties and their capacity in connection with the issue of overprovision. Applying as the Court understands this methodology, in the appellant's case, as at 30 April 2021 being the date of assessment the respondent was able to ascertain that there were a total of 1120 licensed HMOs in the relevant HMO locality out of a total of 2400 dwelling units, which would equate to 47% of the total dwelling units, and also that the 1120 licensed units had between them capacity for 5227 persons. Had the Subject Plan and its suggested 30% threshold been considered binding by the respondent, or had the respondent considered its discretion to have been fettered in the matter as a result, one would have thought that the respondent's analysis would have continued no further beyond that stage. However, it is clear from Mr Bloomfield's affidavit that the respondent's analysis and consideration of the issue of overprovision did not come to an end at that point.

[57] As section 12(1)(b) of the 2016 Act makes clear, the second mandatory consideration which a Council is required to have regard to in connection with the issue of overprovision is the need for housing accommodation in the locality, and the extent to which HMO accommodation is required to meet that need. Such needs and requirements will no doubt be fluctuating, and it will be necessary for empirical analyses to be done from time to time, so as to enable a Council to understand what might be the current accommodation needs in a given locality and to what extent, if at all, HMO accommodation rather than other types of accommodation might be required to meet those needs. Para 28 of Mr Bloomfields's first affidavit details how the respondent proceeded further in this regard. The Court notes that in advance of the appellant's application for a new HMO licence coming on for consideration before the Licensing Committee, the respondent had moved to ascertain the number and capacity of all HMO properties advertised for let on the Property News website on 10 June 2021, finding as Mr Bloomfield states that there were 66 properties advertised for let with 3 or more bedrooms within the entirety of the postal area of BT7, which between them offered a capacity of 260 spaces, with 7 of these properties being located within the locality of the subject premises, that is Policy Area HMO 2/22 Botanic, Holylands and Rugby. The above information was then relied upon to inform the contents of a report to be presented before the respondent's Licensing Committee at its 16 June 2021 meeting. The Court has observed that the conclusion as to overprovision which was arrived at by means of that report was that there did appeared to be, at that time, a sufficient supply of HMO accommodation available within the relevant area.

[58] The Court also notes that the appellant either in person or through his agent was, quite properly, afforded the opportunity by the respondent in advance of its decision being arrived at, to attend and make representations at that meeting on 16

June 2021, an opportunity which the Court notes he duly availed of, by means of the attendance of Mr Hagan, his agent.

[59] Clearly, issues such as the need for and availability of accommodation within a given area will fluctuate significantly from time to time, depending upon prevailing circumstances. Since a Council required to consider the issue of overprovision can only be reasonably expected to do so in reliance upon such information as is actually available to it at any given time, caution should be exercised before a Council is accused of failing to properly have regard to some specific development or item of anecdotal information. In the present case, the appellant sought to implicitly criticise the respondent in reliance upon a reported offer from Queens University Belfast to pay students a sum of money not to take up their university accommodation. The report of that offer however only appears to have been first published on or about 9 September 2021, more than two months after the respondent had already arrived at its final decision herein.

[60] On the basis of the evidence adduced before it, the Court ultimately accepts that the contents of the Subject Plan were only one out of a number of relevant considerations which the respondent took into account before it finally arrived at its decision herein, namely that to grant to the appellant the new HMO licence being sought by him would indeed be likely to result on overprovision. Other material which the Court is satisfied the respondent correctly ascertained and then also took account of was the empirical evidence which the Council accessed as to the need for and availability of HMO accommodation within the relevant locality encompassing the subject premises. The Court is satisfied that in approaching the issue of overprovision as it did, the respondent acted entirely in accordance with its statutory obligations under section 12(1) of the 2016 Act.

DECISION

[61] For the reasons set out above, the Court has not ultimately been persuaded that any of the grounds of appeal relied upon herein by the appellant have been successfully made out. The appeal is accordingly dismissed in its entirety on the merits, and I will hear from counsel as to the issue of costs.