



- 12 Fly Tipping Offence (Pages 37 - 38)
- 13 Cateries Report March 2014 (Pages 39 - 42)
- 14 Clean Neighbourhoods and Environment Act 2005, Fixed Penalty Notices. (Pages 43 - 46)
- 15 Draft Enforced Sale Delegated Authority (Pages 47 - 58)
- 16 URGENT BUSINESS

To consider any business which is urgent within the meaning of Section 100(B)4 of the Local Government Act.

**Members:** Councillors Allport, Bailey, Hailstones, Mrs Hailstones, Kearon, Matthews, Olszewski (Chair), Miss Olszewski (Vice-Chair), Snell, Welsh, White, Mrs Williams and Mrs Winfield

**PLEASE NOTE:** The Council Chamber and Committee Room 1 are fitted with a loop system. In addition, there is a volume button on the base of the microphones. A portable loop system is available for all other rooms upon request.

**Members of the Council:** If you identify any personal training/development requirements from any of the items included in this agenda or through issues raised during the meeting, please bring them to the attention of the Democratic Services Officer at the close of the meeting.

**Meeting Quorums :-** 16+= 5 Members; 10-15=4 Members; 5-9=3 Members; 5 or less = 2 Members.

Officers will be in attendance prior to the meeting for informal discussions on agenda items.

## GUIDANCE NOTES

### NATURAL JUSTICE AND FAIRNESS

These are the principles used in the determination of just or fair processes and stem from the common law legal system.

According to Roman law, certain basic legal principles were so obvious that they should be applied universally without the need to be enacted into the law.

The rules of natural justice are now regularly applied by courts in both common law and civil law jurisdictions.

Natural justice operates on the principles that man is basically good, that a person of good intent should not be harmed and one should treat others as they would like to be treated.

Natural justice includes the notion of procedural fairness and may incorporate the following guidelines:-

- A person accused of a crime, or at risk of some form of loss, should be given adequate notice about the proceedings (including any charges);
- A person making a decision should declare any personal interest they may have in the proceedings;
- A person who makes a decision should be unbiased and act in good faith. He therefore cannot be one of the parties in the case, or have an interest in the outcome. This is expressed in the Latin maxim, *nemo iudex in causa sua*: “no man is permitted to be judge in his own cause”;
- Proceedings should be conducted so they are fair to all the parties – expressed in the Latin maxim, *audi alteram* : “let the other side be heard”;
- Each party to a proceeding is entitled to ask questions and contradict the evidence of the opposing party;
- A decision-maker should take into account relevant considerations and extenuating circumstances, and ignore irrelevant considerations;
- Justice should be seen to be done. If the community is satisfied that justice has been done they will continue to place their faith in the courts.

Where a person’s legal rights are concerned, the principles of natural justice are bolstered by Article 6 of the European Convention on Human Rights which is now incorporated into domestic law.

### THE RULE AGAINST BIAS

It is elementary to the rules of natural justice that the deciding body is to be free from bias.

The rule is that the body must be and be seen to be impartial, independent and disinterested.

There are two broad categories of bias:

- (a) Actual Bias: when the decision-maker has an economic interest in the outcome of the case (also known as a material or pecuniary interest) subject to the De Minimum doctrine;
- (b) Reasonable Apprehension: unbiased appearance is an essential part of procedural fairness. The test is whether, having regard to the circumstances, a well informed person ("reasonably informed bystander") would consider that the interest might have an influence on the exercise of the decision-maker's duties.

## **GUIDANCE NOTES**

### **HUMAN RIGHTS ACT 1998**

In addition to the Rules of Natural Justice, you must also have regard to the provisions of the Human Rights Act 1998.

#### **Rights and Freedoms to be considered when determining matters**

##### ARTICLE 6: RIGHT TO A FAIR TRIAL

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly, but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
  - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
  - (b) to have adequate time and facilities for the preparation of his defence;
  - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means, to pay for legal assistance, to be given it free when the interests of justice so require;
  - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

##### ARTICLE 8: RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

##### ARTICLE 10: FREEDOM OF EXPRESSION

1. Everyone has the right to freedom of expression. This rights shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

#### ARTICLE 14: PROHIBITION OF DISCRIMINATION

The enjoyment of the rights and freedoms set fourth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

**NB** This is not a substantive right, but comes into play if other rights are likely to have been infringed. The prohibition is wide, but not exhaustive

#### ARTICLE 1: OF THE FIRST PROTOCOL PROTECTION OF PROPERTY

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

**NOTE** Possessions, in this context, includes the right to apply for a licence, the right to hold and retain a licence, the goodwill of a business and liquor licences.



## **GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS FOR APPLICANTS FOR THE GRANT AND RENEWAL OF LICENCES TO DRIVE HACKNEY CARRIAGES AND PRIVATE HIRE VEHICLES**

### **GENERAL POLICY**

1. Each case will be decided on its own merits
2. The Council will, as far as is possible, ensure that all persons holding a licence to drive Hackney Carriages or private hire vehicles are fit and proper persons. In doing so, the Council will take into account previous convictions including, where relevant, 'spent' convictions.
3. The Council will always put the protection of the public first when considering the relevance of convictions recorded against an applicant for a licence.
4. A person with a conviction for serious crime need not be permanently barred from obtaining a licence but will be expected to remain free of conviction for an appropriate period, before an application is considered. However, remaining free of conviction for a specified period may not be sufficient to show that a person is fit and proper and additional evidence may be required.
5. There may be occasions where it is appropriate to depart from the guidelines when making a decision on an application. For example, where the offence is a one-off and there are mitigating circumstances or alternately, where there are many or continuous offences which may show a pattern of offending and unfitness.
6. The following examples give a general guide as to the action that might be taken where convictions are recorded against an applicant.

#### **(a) Dishonesty**

Members of the public using Hackney Carriages and private hire vehicles expect the driver to be honest and trustworthy. It would be easy for a dishonest driver to take advantage of the public.

For these reasons, a serious view will be taken of any conviction involving dishonesty. In general, if an application is made within the first 3 to 5 years from the date of a conviction or from the date of release from jail where a custodial sentence has been imposed, it is likely that it will be refused.

Where an application is made within the first three years since the conviction or the date of release from jail, where a custodial sentence has been

imposed, for any of the following offences, the application will normally be refused:-

- Theft
- Burglary
- Fraud
- Benefit fraud (including offences under ss11A and 112 of the Social Security Administration Act 1992)
- Blackmail
- Handling or receiving stolen goods
- Forgery
- Conspiracy to defraud
- Obtaining money or property by deception
- Other deception
- Or similar offences to those above which may replace any of the above offences

When a period of three years from conviction or the date of release from jail, where a custodial sentence has been imposed has passed, consideration will be given to the circumstances of the offence and any evidence to show that an applicant is a fit and proper person to hold a licence.

**(b) Violence**

As Hackney Carriage and private hire vehicle drivers maintain close contact with the public, a firm line will be taken with applicants who have convictions for violence. Where the commission of an offence involves loss of life, a licence will normally be refused. In other cases, a period of three to ten years free of conviction from the date of conviction or the date of release from jail, where a custodial sentence has been imposed will generally be required before an application is likely to be considered favourably. The nature and seriousness of the offence(s) will be taken into consideration.

In particular:-

- (i) An application will normally be refused where the applicant has a conviction for an offence of:-
  - Murder
  - Manslaughter
  - Manslaughter or culpable homicide while driving
  - Or similar offence or offences which replace the above offences
  
- (ii) An application will normally be refused for a period of five years from the date of the conviction or the date of release from jail, where a custodial sentence has been imposed if the applicant has a conviction for:-
  - Arson
  - Malicious wounding or grievous bodily harm which is racially aggravated
  - Assault occasioning actual bodily harm which is racially aggravated



- Assault with intent to cause grievous bodily harm
- Assaulting a police officer in the execution of his duties
- Malicious wounding
- Robbery
- Racially aggravated criminal damage
- Racially aggravated fear or provocation of violence
- Racially aggravated intentional harassment, alarm or distress
- Racially aggravated harassment
- Racially aggravated putting people in fear of violence
- Riot
- Possession of an offensive weapon
- Possession of a firearm
- Violent disorder
- Or any arrestable offence involving violence (an arrestable offence is defined as an offence committed by a person of age 21 years or over and on conviction for the first offence may be sentenced to a term of imprisonment of five years or where the penalty is fixed by law)

(iii) An application will normally be refused for a period of three years from the date of conviction or the date of release from jail, where a custodial sentence has been imposed, where the applicant has a conviction for:-

- Common assault
- Racially aggravated common assault
- Assault occasioning actual bodily harm
- Affray
- Racially aggravated harassment, alarm or distress
- Resisting arrest
- Obstructing a police officer in the execution of his duty
- Criminal damage
- Any similar offence or offences which replace the above offences

**(c) Drugs**

An application will normally be refused if an applicant has a conviction for an offence that relates to the supply or importation of drugs and the date of the conviction or the date of release from jail, where a custodial sentence has been imposed, is less than five to ten years before the date of the application. However, after five years from the date of such a conviction or the date of release from jail, where a custodial sentence has been imposed, the circumstances of the offence and any evidence which shows that a person is now a fit and proper person to hold a licence will be taken into consideration.

An application will normally be refused where the application is made within three to five years from the date of a conviction or the date of release from jail, where a custodial sentence has been imposed for an offence relating to the possession of drugs. However, after a period of three years from the date of such a conviction or the date of release from jail, where a custodial sentence has been imposed, consideration will be given to the circumstances

of the offence and any evidence to show that an applicant is a fit and proper person to hold a licence.

An application will normally be refused where an applicant has more than one conviction for offences related to the possession of drugs and the last conviction or the date of release from jail, where a custodial sentence has been imposed, is less than five years before the date of the application.

Where evidence is available that an applicant who has convictions for drug related offences has been addicted to drugs, they will have to produce evidence that shows that they have been free of drug taking for at least five years after successfully completing a drug treatment programme.

**(d) Sexual and Indecency Offences**

As the driver of Hackney Carriages and private hire vehicles often carry passengers who are alone, or may be vulnerable, applicants who have convictions for rape, indecent assault, any sexual offence involving children and any conviction for an offence under the Sexual Offences Act 2003 will normally be refused a licence.

Where an applicant has a conviction for a sexual offence such as indecent exposure, they will normally be refused a licence until they can show a substantial period usually between five and ten years free of any such convictions from the date of conviction or the date of release from jail where a custodial sentence has been imposed before an application is made.

After a period of five years from the date of a conviction or the date of release from jail, where a custodial sentence has been imposed, consideration will be given to the circumstances of the offence and any evidence to show that an applicant is a fit and proper person to hold a licence.

When considering applications, the Council may take into account any information of a sexual nature which does not amount to a criminal offence that is brought to its attention where that information may indicate that an applicant may not be a fit and proper person to hold a licence.

**(e) Motoring Convictions**

**(i) Disqualification**

Where an applicant had been disqualified from driving by the Courts for a serious traffic offence under Category 'A' of Annex (i), an application will generally be refused unless a period of five years free of conviction has passed since the return of the DVLA licence.

Where an applicant has been disqualified from driving by the Courts for a serious traffic offence under Category 'B' of Annex (i), an application will generally be refused unless a period of five years free of conviction has passed since the return of the DVLA licence unless the offence was an isolated one, in which case, a period of not less than 2 years shall have passed.

Where a disqualification is imposed by a court in a 'totting-up' case, i.e. where an applicant has been disqualified because of several

driving offences, an application will generally be refused unless a period of one year free of conviction has elapsed since the return of the DVLA driver licence.

In 'totting-up' cases where a court does not impose a disqualification because of exceptional circumstances, then because the Council apply different criteria to the courts, an application will generally be refused unless an applicant can show a period of 1 year free of conviction from the date of the last court appearance.

(ii) Serious Traffic Offences

Where an applicant has a conviction for a serious traffic offence in Category 'A' Annex (i) and a period of disqualification has not been imposed by the courts, an application will normally be refused where an application is made in the last five years following the date of the last conviction.

Where an applicant has a conviction for a serious traffic offence in Category 'B' Annex (i) and a period of disqualification has not been imposed by the courts, an application will normally be refused where an application is made in the last five years following the date of the last conviction unless the offence was an isolated one.

Where an applicant has had more than one conviction for a serious traffic offence in either Category 'A' or 'B' of Annex (i) and the courts have not imposed a period of disqualification, an application will normally be refused where an application is made in five years following the date of the last conviction.

(iii) Other Traffic Offences

Normally, isolated convictions for other traffic offences should not prevent someone obtaining a licence. However, the number, type and the frequency of these types of offence will be taken into account. If there are several convictions for these types of offence, an applicant will normally be expected not to have been convicted of an offence in the six months before an application is made.

A list of relevant offences is shown at Annex (ii). However, this is not an exhaustive list and there may be other offences which may be relevant.

(f) **Offences Under the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976 and any Hackney Carriage Byelaws (The Acts)**

One of the main purposes of the licensing regime set out in 'The Acts' is to ensure the protection of the public. For this reason, a serious view will be taken of convictions for offences under the legislation, particularly offences of illegal plying for hire, when deciding if a person is a fit and proper person to hold a licence.

In particular, an application will normally be refused where an applicant has more than one conviction for an offence under 'The Acts' in the two years preceding the date of the application.

**(g) Drunkenness**

(i) In a Motor Vehicle

The manner in which drunkenness in a motor vehicle will be dealt with is outlined in Motoring Offences at paragraph 'e' of these guidelines.

(ii) Not in a Motor Vehicle

Where an applicant has an isolated conviction for drunkenness, this need not stop an applicant from getting a licence. In some cases, a warning may be appropriate. However, where an applicant has a number of convictions for drunkenness, it could indicate a medical problem, which would require further investigation including a medical examination and the possible refusal of a licence.

**(h) Spent Convictions**

The Council will only take 'Spent Convictions' into consideration if it is considered they are relevant to the application.

**(i) Formal Cautions and Fixed Penalty Notices**

For the purposes of these guidelines, the Council will treat Formal Cautions issued in accordance with Home Office guidance and fixed penalty notices as though they were a conviction before the courts.

## SERIOUS TRAFFIC OFFENCES

CATEGORY 'A'	
Offence Code	Offence
<b>Careless Driving</b>	
<b>CD40</b>	Causing death through careless driving when unfit through drink
<b>CD50</b>	Causing death through careless driving when unfit through drugs
<b>CD60</b>	Causing death through careless driving with alcohol level above the limit
<b>CD70</b>	Causing death through careless driving then failing to supply a specimen for analysis
<b>Reckless/Dangerous Driving</b>	
<b>DD40</b>	Dangerous driving
<b>DD60</b>	Manslaughter or culpable homicide while driving a vehicle
<b>DD80</b>	Causing death by dangerous driving
<b>Miscellaneous Offences</b>	
<b>MS50</b>	Motor racing on a highway
<b>Theft and Unauthorised Taking</b>	
<b>UT50</b>	Aggravated taking of a vehicle

**PLEASE NOTE:**

Any offence of aiding, abetting or procuring the above offences, the offence code will have the **0** replaced by a **2**.

Any offence of causing or permitting the above the offences, the offence code will have the **0** replaced by a **4**.

Inciting any of the above offences, the offence code will have the **0** replaced by a **6**.

<b>CATEGORY 'B'</b>	
<b>Offence Code</b>	<b>Offence</b>
<b>Accident Offences</b>	
<b>AC10</b>	Failing to stop after an accident
<b>AC20</b>	Failing to give particulars or report an accident within 24 hours
<b>BA10</b>	Driving whilst disqualified by order of the court
<b>BA30</b>	Attempting to drive whilst disqualified by order of the court
<b>Careless Driving</b>	
<b>CD10</b>	Driving without due care and attention
<b>CD20</b>	Driving without reasonable consideration for other road users
<b>CD30</b>	Driving without due care and attention or without reasonable consideration for other road users
<b>Construction and Use Offences</b>	
<b>CU10</b>	Using a vehicle with defective brakes
<b>CU20</b>	Causing or likely to cause danger by use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition
<b>CU30</b>	Using a vehicle with defective tyre(s)
<b>CU40</b>	Using a vehicle with defective steering
<b>CU50</b>	Causing or likely to cause danger by reason of load or passengers
<b>Drink or Drugs</b>	
<b>DR10</b>	Driving or attempting to drive with alcohol level above limit
<b>DR20</b>	Driving or attempting to drive while unfit through drink
<b>DR30</b>	Driving or attempting to drive then failing to supply a specimen for analysis
<b>DR40</b>	In charge of a vehicle while alcohol above limit
<b>DR50</b>	In charge of a vehicle while unfit through drink
<b>DR60</b>	Failure to provide specimen for analysis in circumstances other than driving or attempting to drive when unfit through drugs
<b>DR70</b>	Failing to provide a specimen for breath test
<b>DR80</b>	Driving or attempting to drive when unfit through drugs
<b>DR90</b>	In charge of a vehicle while unfit through drugs
<b>Insurance Offences</b>	
<b>IN10</b>	Using a vehicle uninsured against third party risks
<b>Licence Offences</b>	
<b>LC30</b>	Driving after making a false declaration about fitness when applying for a licence
<b>LC40</b>	Driving a vehicle after having failed to notify a disability
<b>Miscellaneous Offences</b>	
<b>MS70</b>	Driving with uncorrected defective eyesight

**PLEASE NOTE:**

Any offence of aiding, abetting or procuring the above offences, the offence code will have the **0** replaced by a **2**.

Any offence of causing or permitting the above the offences, the offence code will have the **0** replaced by a **4**.

Inciting any of the above offences, the offence code will have the **0** replaced by a **6**.

If any of the offences in **Category 'B'** involve a licensed Hackney Carriage or private hire vehicle, they will be treated as though they are a **Category 'A'** offence.

## OTHER TRAFFIC OFFENCES

Offence Code	Offence
<b>LC20</b>	Driving otherwise than in accordance with a licence
<b>LC50</b>	Driving after a licence has been revoked or refused on medical grounds
<b>MS10</b>	Leaving a vehicle in a dangerous position
<b>MS20</b>	Unlawful pillion riding
<b>MS30</b>	Play street offences
<b>MS60</b>	Offences not covered by other codes
<b>MS80</b>	Refusing to submit to an eyesight test
<b>MS90</b>	Failure to give information as to identity of driver etc
<b>MW10</b>	Contravention of Special Road Regulations (excluding speed limits)
<b>PC10</b>	Undefined contravention of Pedestrian Crossing Regulations
<b>PC20</b>	Contravention of Pedestrian Crossing Regulations with a moving vehicle
<b>PC30</b>	Contravention of Pedestrian Crossing Regulations with a stationery vehicle
<b>SP10</b>	Exceeding goods vehicle speed limits
<b>SP20</b>	Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)
<b>SP30</b>	Exceeding statutory speed limit on a public road
<b>SP40</b>	Exceeding passenger vehicle speed limit
<b>SP50</b>	Exceeding speed limit on a motorway
<b>SP60</b>	Undefined speed limit offence
<b>TS10</b>	Failing to comply with traffic light signals
<b>TS20</b>	Failing to comply with double white lines
<b>TS30</b>	Failing to comply with 'stop' sign
<b>TS40</b>	Failing to comply with direction of a constable/warden
<b>TS50</b>	Failing to comply with traffic sign (excluding stop signs, traffic lights or double while lines)
<b>TS60</b>	Failing to comply with a school crossing patrol sign
<b>TS70</b>	Undefined failure to comply with a traffic direction sign



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Any offence of causing or permitting the above the offences, the offence code will have the **0** replaced by a **4**.

Inciting any of the above offences, the offence code will have the **0** replaced by a **6**.

If any of the offences in **Category 'B'** involve a licensed Hackney Carriage or private hire vehicle, they will be treated as though they are a **Category 'B'** offence under Annex (ii).

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**PUBLIC PROTECTION COMMITTEE**

Monday, 3rd February, 2014

**Present:-** Councillor Mark Olszewski – in the Chair

Councillors Allport, Bailey, Kearon, Matthews, Miss Olszewski, Williams,  
Mrs Williams and Mrs Winfield

1. **ALSO IN ATTENDANCE**

(Item 10 only)

Mrs T Jones – Hackney Carriage Drivers Association  
Mr T Mahmood – Hackney Carriage Drivers Association

2. **APOLOGIES FOR ABSENCE**

Apologies were received from Councillors Mrs Hailstones, Hailstones and Welsh.

3. **DECLARATIONS OF INTEREST**

There were no Declarations of Interest stated.

4. **MINUTES OF PREVIOUS MEETING**

**Resolved:-** That the minutes of the meeting of this Committee held on 2  
December, 2013 be agreed as a correct record.

5. **DISCLOSURE OF EXEMPT INFORMATION**

**Resolved:-** That the public be excluded from the meeting during  
consideration of the following matters because it is likely that  
there will be disclosure of exempt information as defined in  
paragraphs 1, 2 and 7 in Part 1 of Schedule 12A of the Local  
Government Act, 1972.

6. **CONFIDENTIAL REPORT(S)**

7. **LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT - 1976 - MR NY**

**Resolved:-** That, in the circumstances that the applicant, Mr NY was  
unable to be present, consideration of this application be  
deferred to the next meeting.

8. **LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT - 1976 - MR VU**

The Committee considered an application from Mr VU for the grant of a Private Hire  
Driver's Licence.

Mr VU was given the opportunity to address the Committee. His solicitor, who had  
accompanied him to the meeting and spoke on his behalf provided a number of  
written character references that were read out and passed to the Chairman.

- Resolved:-**
- (a) That a Private Hire Driver's Licence be granted to Mr VU for a probationary period of six months during which time he be advised that his conduct would be closely monitored.
  - (b) That upon completion of the six months probationary period a report be submitted to the first available meeting of this Committee when a decision, based on the applicants conduct during that time, would be made as to whether a full Private Hire Driver's Licence should be granted.

**9. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT - 1976 - MR AH**

Consideration was given to a report asking the Committee what action it wished to take in respect of the Hackney Carriage Driver's Licence currently held by Mr AH.

Mr AH was given the opportunity to address the Committee.

- Resolved:-** That, for the reasons stated at the meeting, Mr AH be allowed to retain his Hackney Carriage Driver's Licence but that he be warned that any future misconduct or breaches of Council Policy would result in further consideration being given to the licence being revoked by the Committee.

**10. CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005 - FIXED PENALTY NOTICES. - LITTERING OFFENCES**

Consideration was given to a report advising of actions taken in respect of littering offences within the borough and seeking authorisation to institute legal proceedings against Fixed Penalty Notice Holders referred to in the agenda.

- Resolved:-** That legal proceedings be instituted in relation to those persons referred to in the agenda.

**11. OPEN REPORTS FROM OFFICERS**

**12. CONSULTATION ON HACKNEY CARRIAGE AGE POLICY**

Reference was made to the Council's earlier resolution to consult the Hackney Carriage Trade on a proposal to amend the Council's current Age Policy for Hackney Carriage Vehicles.

The proposal, consulted upon with all Hackney Carriage proprietors was as follows:-

*'Saloon type vehicles will be less than 5 years of age when tested but will cease to be re-licensed when they are 8 years of age.*

*As for those vehicles, purpose built for Hackney Carriage purposes, those type of vehicle must be less than 5 years of age when first tested but can remain licensed for as long as they continue to pass consecutive annual tests.'*

The Chairman welcomed Mrs Jones and Mr Mahmood (Hackney Carriage Driver's Association) and allowed them to address the meeting on behalf of their members who strongly objected to the adoption of the proposals.

- Resolved:-**
- (a) That, from 1 April, 2014, in relation to applications to licence Hackney Carriage vehicles, that are purpose built and wheelchair accessible, the vehicles shall be less than 5 years of age when first tested. These vehicles will continue to be relicensed on passing consecutive annual tests.
  - (b) That, consideration of the proposal that with effect from 1 January, 2015 all Hackney Carriage vehicles that are saloon cars will cease to be re-licensed when they are 8 years of age be deferred to a subsequent meeting to enable the officers to provide details of the age profile of the Council's Hackney Carriage fleet.

**13. CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005 - FIXED PENALTY NOTICES - DOG CONTROL ORDERS**

The Committee considered a report advising of actions taken in respect of Dog Control Orders' within the Borough.

**Resolved:-** That the report be received.

**14. PIGEON CONTROL - NEWCASTLE TOWN CENTRE**

Consideration was given to a report providing an update to Members on actions taken to reduce feral pigeon numbers in the town centre.

**Resolved:-** That the report be received.

**15. PRIVATE HIRE AND HACKNEY CARRIAGE DRIVER TRAINING**

Having previously discussed this matter at its meeting on 5 September, 2013, the Committee considered a further report providing details of the outcome of the consultation undertaken with the Hackney Carriage and Private Hire Drivers' fraternity.

The content of responses received was summarised in the officers report on the agenda.

**Resolved:-** That, with effect from 1 October, 2015 anyone holding either a Private Hire or Hackney Carriage driver's licence shall have obtained a relevant qualification, the minimum qualification being either a Btec for private hire and hackney carriage drivers or alternatively the Driving Standards Agency taxi test which incorporates wheelchair training. Any licences renewed to those without such a qualification will expire on 1 October, 2015. These licenses will then be extended to the full 3 years on the production of a relevant qualification.

**16. CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005 - FIXED PENALTY NOTICES - LITTERING OFFENCES**

Consideration was given to a report detailing the outcome of prosecution proceedings in respect of littering offences within the Borough.

**Resolved:-** That the report be received.

**COUNCILLOR MARK OLSZEWSKI**  
**Chair**

By virtue of paragraph(s) 1, 2, 7 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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# Agenda Item 9

By virtue of paragraph(s) 1, 2, 7 of Part 1 of Schedule 12A of the Local Government Act 1972.

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**PUBLIC PROTECTION COMMITTEE**  
**31<sup>ST</sup> MARCH 2014**

**Submitted by:**           **Head of Business Improvement and Partnerships**

**Purpose**

To provide information concerning the age profile of the Hackney Carriage Fleet.

**Recommendation**

That as from the 1<sup>st</sup> January 2015 all Hackney Carriage vehicles that are saloon cars shall cease to be relicenced when they are 8 years old.

1.     **Background**

1.1    Members will recall at their last meeting held on 3<sup>rd</sup> February 2014, considering a proposal to amend the Council's policy for the age of saloon-type Hackney Carriage Vehicles. A copy of the report is attached at appendix 3

Before making a decision on the recommendation from the previous report on saloon Hackney Carriages, the Committee felt it necessary to have information about the current age profile of those saloon-type Hackney Carriages and how many vehicles would be affected in the first year following the proposed date of implementation.

The Council's records have been checked and reveal the following:

Vehicles registered in 2013	-	0
Vehicles registered in 2012	-	3
Vehicles registered in 2011	-	0
Vehicles registered in 2010	-	12
Vehicles registered in 2009	-	25
Vehicles registered in 2008	-	43
Vehicles registered in 2007	-	7
Vehicles registered in 2006	-	4
Vehicles registered in 2005	-	5
Vehicles registered in 2004	-	7
Vehicles registered in 2003	-	2

2.     **Issues**

2.1    Should the proposal be adopted, the number of vehicles affected in the first year will be 25.

3.     **Options**

The Committee can:

- (i)     Adopt the proposal.
- (ii)    Amend the proposal.
- (iii)   Reject the proposal.

4.     **Recommendation**

That as from 1 January 2015 all hackney carriage vehicles that are saloon cars will cease to be relicensed when they are 8 years of age.

5. Reasons for Preferred Option

To continue the review of the Council's policies and procedures and to ensure the continued safety and comfort of the public using this type of transport, and to achieve parity with Private Hire Vehicles which presently have the same age policy as the proposal.

6. Crime and Disorder

Reducing the incidence of crime to vulnerable groups and reducing the fear of crime.

7. Human Rights

Article 6(1) guarantees an applicant a fair hearing.  
Article 14 guarantees no discrimination.

8. Equality Impact Assessment

No issues have been identified.

9. Major Risks

None.

10. Key Decision Information

11. Earlier Cabinet/Committee Resolutions

1. **Environmental Protection Act 1990, Section 33, 34, 34(2A)**

**Submitted by**            **Head of Environmental Health Services**

**Portfolio**                **Environment and Recycling**

**Ward(s) affected**      **All**

**Purpose of the Report**

To advise the Committee of action taken in respect of a Flytipping offence within the Borough and to seek authorisation to institute legal proceedings.

**Recommendations**

*That:*        That legal proceedings be instituted in relation to the case mentioned below.

**Reasons**

The action should deter other persons from fly tipping within the Borough.

1. **Background**

On the 22 August 2013, a complaint was received of a fly tipping incident at Moss Lane, Madeley, Newcastle under Lyme. A visit to the area was carried out on that day, however the accumulation had been removed by the Newcastle Borough Streetscene team. The investigating officer received a series of photographs and letters from the streetscene offices, detailing the items from the flytipping incident.

At the third attempt on the 19 December 2013, the officer carried out a Police and criminal Evidence Act (PACE) interview, and under caution Mr MP confirmed that he had been responsible for tipping the waste. In view of the witness statement, photographs and PACE interview it would be prudent for the committee to consider the following issue.

2. **Issues**

Consideration should be given to bringing a prosecution as contrary to section 33 and 34, we have reason to believe that Mr MP deposited controlled waste on land without a waste management licence authorising such a deposit. He also failed to dispose of controlled waste otherwise than in accordance with a waste management licence. He has failed in his 'duty of care' to secure the transfer of waste to an authorised person or to a person authorised for transport purposes. A prosecution would be taken under section 33 or 34 (2A) Environmental Protection Act 1990 (As amended by

The Waste (Household Waste Duty of Care) (England and Wales) Regulations 2005).

3. **Policy Considerations**

There are none arising from this report.

4. **Outcomes Linked to Corporate Priorities**

4.1 Creating a cleaner, safer and sustainable Borough.

- Streets and open spaces are clean and the community have pride in the Borough and take responsibility for seeing that it is clean and pleasant by reducing waste.
- The community is not put at risk from pollution or environmental hazards.

5. **Legal and Statutory Implications**

5.1 The Environmental Protection Act 1990 places a duty on the Council and provides powers.

6. **Equality Impact Assessment**

6.1 There are no differential equality impacts identified within this report.

7. **Financial and Resource Implications**

The Council would seek to recover costs during any court proceedings.

8. **Major Risks**

8.1 There are no major risks with this report.

**NEWCASTLE-UNDER-LYME BOROUGH COUNCIL**

**EXECUTIVE MANAGEMENT TEAM'S REPORT TO THE  
PUBLIC PROTECTION COMMITTEE**

**Date 31<sup>st</sup> March 2014**

1. **HEADING** Review of Licensing Standards for Catteries  
**Submitted by:** David Beardmore, Environmental Health Team Manager  
Dog & Pest Control
- Portfolio:** Environment & Recycling
- Ward(s) affected:** All

**Purpose of the Report**

To seek Committees support to review licensing standards for catteries.

**Recommendations**

- That Committee confirms its support, in principle to updating the licensing standards, and approves further research by officers and consultation with businesses to determine its impact
- That a further report be submitted to the June Committee detailing officers' findings and a final decision made as to whether the benefits of adopting new standards outweigh any adverse impact it may have on businesses.

**Reasons**

To enable Committee to be properly briefed should it wish to consider revising the cattery licence standards.

1. **Background**

- 1.1 The Animal Boarding Establishments Act 1963 requires anyone who wishes to keep a boarding establishment to be licensed by the local authority and abide by the conditions of the licence.
- 1.2 The council currently licence 10 catteries in the borough and are a mixture of old and new premises, large and small. Details of all catteries in the borough are listed on our website (see background papers).
- 1.3 The council adopted its current cattery licensing standards in 1999. Since then there have been developments in the understanding of animal welfare and also the introduction of the Animal Welfare Act 2006. Therefore groups including the Chartered Institute of Environmental Health (CIEH), Cats Protection League, RSPCA and British Small Animal Veterinary Association felt it was time to revise the current standards. Their "*Model Licence Conditions and Guidance for Cat Boarding Establishments*" was published in November 2013 (see background papers)
- 1.4 Licensing standards set the criteria which officers check when determining if premises should receive a licence from the council. All the businesses licensed by the council, meet or

exceed the required standards for our current (1999) conditions but may need to make changes if standards are updated, as best practice has evolved.

2. **Issues**

2.1 Adopting updated standards will have consequences for our catteries

<u>Positives</u>	<u>Negatives</u>
<ul style="list-style-type: none"> <li>• Premises which the authority licences will operate to modern conditions</li> <li>• Premises will be compliant with a national modern standard, based on robust animal welfare principles</li> <li>• People boarding their cats can be confident that licensed premises meet a high standard.</li> </ul>	<ul style="list-style-type: none"> <li>• To comply with new standards some expenditure may be required to update facilities</li> <li>• Some sites may potentially need to reduce the number of animals they board</li> <li>• Some businesses may decide to cease trading rather than update their facilities</li> <li>• Pet owners could have a reduced choice of premises</li> </ul>

2.2 Officers consider that before making any changes it is appropriate to consult with the businesses which will be affected, identify if they would support or oppose the changes and understand the potential costs they may incur.

2.3 Such consultation will require officer time and incur costs such a travel.

2.4 Officers feel it is inappropriate to engage with businesses unless Committee are supportive to an update of best practice.

3. **Options Considered** (if any)

3.1 Two options are now available:

3.1.1 Retain existing licensing standards ('Do Nothing' option)

<u>Advantages:</u>	<u>Disadvantages:</u>
<ul style="list-style-type: none"> <li>• Consultation doesn't need to be undertaken – enabling officer resource to be targeted elsewhere</li> <li>• No changes required by businesses</li> </ul>	<ul style="list-style-type: none"> <li>• The authority would potentially licence premises which no longer meet modern standards</li> <li>• Premises may not meet current animal welfare standards</li> <li>• Premises licensed by the council could be subject to Animal Welfare Act enforcement action</li> <li>• Pet owners loose confidence in the standards of the councils licensed premises and use facilities in other districts where they believe standards are higher</li> </ul>



3.1.2 Investigate the impact of adopting CIEH Model Licence Conditions and Guidance for Cat Boarding Establishments

<u>Advantages:</u>	<u>Disadvantages</u>
<ul style="list-style-type: none"><li>• Encourages premises to achieve current best practice</li><li>• Ensures that licensing requirements imposed by the council follow robust national guidance, ensuring decisions are consistent and the reasoning behind them transparent</li><li>• Businesses operating at a high standard are likely to attract more clients</li></ul>	<ul style="list-style-type: none"><li>• Cost of improvement may be considered unviable by some businesses causing some catteries to cease trading.</li></ul>

4. **Proposal**

- 4.1 That Committee confirms its support, in principle, for updating licensing standards, and approves further research by officers and consultation with businesses to determine its impact.
- 4.2 That Committee receive a further report at its June meeting detailing officers findings and make a final decision as to whether the benefits of adopting new standards outweigh any adverse impact it may have on businesses.

5. **Reasons for Preferred Solution**

- 5.1 Committing resources to investigation and consultation is unnecessary and wasteful if members are not supportive, in principle, of the conditions being updated.
- 5.2 It is inappropriate to consider updating conditions, or asking members to endorse such a change, without appropriate research to justify the change

6. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

- 6.1 Considering the impact changes will have on businesses this aligns with the councils stated aim to be a co-operative council.
- 6.2 Businesses operating at a higher standard are likely to attract more clients which aligns with our priority of creating a borough of opportunity

7. **Legal and Statutory Implications**

- 7.1 Any business which operates as a boarding establishment must hold a licence. The authority can set appropriate licensing conditions

8. **Equality Impact Assessment**

8.1 No issues have been identified

9. **Financial and Resource Implications**

9.1 Research, consultation and reporting will require approximately 15 hours of officer time. All required costs can be met from existing budgets.

10. **Major Risks**

10.1 Requiring inappropriate changes which have a detrimental impact on businesses would damage the councils reputation

11. **Sustainability and Climate Change Implications**

11.1 No implications have been identified.

12. **Key Decision Information**

12.1 Permission or refusal to undertake this review is not considered a key decision.

13. **Earlier Cabinet/Committee Resolutions**

13.1 Our current standard was adopted in October 1999, Minute Number 466/00

14. **Background Papers**

List of licensed catteries within Newcastle Borough

[http://www.newcastle-staffs.gov.uk/environment\\_content.asp?id=SXD103-A780EC20](http://www.newcastle-staffs.gov.uk/environment_content.asp?id=SXD103-A780EC20)

Current Standard: Newcastle Borough Council Manual For Licensed Establishments, Adopted October 1999 (Min No 466/00)

[http://www.newcastle-staffs.gov.uk/Documents/Environment/animals/Policy%20Manual%20\(colour%20print\).pdf](http://www.newcastle-staffs.gov.uk/Documents/Environment/animals/Policy%20Manual%20(colour%20print).pdf)

CIEH Model Licence Conditions and Guidance for Cat Boarding Establishments 2013

<http://www.newcastle-staffs.gov.uk/Documents/Environment/animals/Model%20licence%20conditions%20and%20guidance%20for%20cat%20boarding%202013%20pdf.pdf>

1. **CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005  
FIXED PENALTY NOTICES**

**Submitted by**            Head of Environmental Health Services

**Portfolio**                Environment and Recycling

**Ward(s) affected**      All

**Purpose of the Report**

To advise the Committee of the action taken in respect of Littering offences within the borough.

**Recommendations**

That the report be received.

**Reasons**

Consistent enforcement is needed to challenge people who choose to ignore the law and the Department for Environment, Food and Rural Affairs (DEFRA) guidance states clearly that pursuing non-payment of fixed penalty notices is key to a successful penalty system. Authorities need to strive for a high payment rate to reflect this success.

1. **Background**

During recent patrols conducted through the town centre and borough of Newcastle-under-Lyme a number of individuals were witnessed Littering. The offenders were approached and advised with regard to the appropriate legislation and their details were then recorded by an enforcement officer.

It is an offence under the Environmental Protection Act 1990 to discard litter, however to avoid a conviction in the courts offenders are given the opportunity to discharge their liability by payment of a fixed penalty. The following offenders have been issued with fixed penalties but failed to pay them, and at Staffordshire Magistrates Court they received the following fines and costs with a victim surcharge (vs):

D022443	Mr Chris Adams	£200 Fine £130 Costs £20 Victim surcharge
D022459	Mr Daniel Jones	£200 Fine £130 costs £20 Victim surcharge
D022460	Ms H Readings	£35 Fine £130 costs £20 Victim surcharge
D022465	Mr Ben Cooper	£55 Fine £130 costs £20 Victim surcharge
D022470	Mr Connor Guein	£135 Fine £130 costs £20 Victim surcharge
D022490	Ms Paige Fradley	£35 Fine £130 costs £20 Victim surcharge
D022491	Mr Matthew Hill	£300 Fine £130 costs £20 Victim surcharge
D022492	Ms Jade Wilkinson	£70 Fine £130 costs £20 Victim surcharge
D022493	Ms Erica McBride	£200 Fine £130 costs £20 Victim surcharge

## 2. **Issues**

Consistent enforcement is needed to challenge people who choose to ignore the law and the Department for Environment, Food and Rural Affairs (DEFRA) guidance states clearly that pursuing non-payment of fixed penalty notices is key to a successful penalty system. Authorities need to strive for a high payment rate to reflect this success.

## 3. **Policy Considerations**

There are none arising from this report.

## 4. **Outcomes Linked to Corporate Priorities**

### 4.1 Creating a cleaner, safer and sustainable borough.

- Streets and open spaces are clean and the community have pride in the borough and take responsibility for seeing that it is clean and pleasant by reducing waste.
- The community is not put at risk from pollution or environmental hazards.

## 5. **Legal and Statutory Implications**

5.1 The Environmental Protection Act 1990 and Clean Neighbourhoods and Environment Act 2005 place duties on the Council and provide powers of enforcement.

## 6. **Equality Impact Assessment**

6.1 There are no differential equality impacts identified within this report.

## 7. **Financial and Resource Implications**

The Council would seek to recover costs during any court proceedings.

8. **Major Risks**

8.1 **Non payment**

The non-payment of fines would need to be considered seriously. If a non-payment culture were allowed to develop the Authority would be in disrepute with the residents and members, undermining confidence in a service which aims to improve the quality of the environment.

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## Public Protection Committee - March 31<sup>st</sup> 2014 then Council - 16<sup>th</sup> April 2014

**HEADING**                      **Dealing with Empty Homes through Enforced Sale**

**Submitted by:**              **Gillian Taylor**

**Portfolio:**                      **Economic Development, Regeneration, & Town Centres**

**Ward(s) affected:**      **All**

### **Purpose of the Report**

To put appropriate delegations in place for the use of Enforced Sale powers under the Law of property Act 1925 to help achieve the aims of the Empty Homes Strategy 2012 – 17.

### **Recommendation**

That it be recommended to full Council that the power to commence Enforced Sale under the Law of Property Act 1925 be delegated to the Public Protection Committee.

### **Reasons**

Enforced Sale is a tool to help change the ownership of an empty home, currently its use is not in the scheme of delegations. The reason for this report is to ensure appropriate delegations are in place to use the powers in line with the principles contained in the Council's Empty Homes Strategy 2012 – 17 and the Council's vision "To create a borough that is prosperous, clean, healthy and safe".

## **1. Background**

- 1.1. The Empty Homes Strategy 2012 – 17 identifies Newcastle-under-Lyme's approach for returning empty homes to use. This is a two stage approach starting with encouragement, support and persuasion, moving on to considering enforcement options. The enforcement options are detailed in the Empty Homes Strategy and range from requiring works to ensure the property is not a detriment or a danger to the neighbourhood moving on to more serious measures such as enforced sale.
- 1.2. This can be used where despite the best efforts on the part of the Council properties remain empty for long periods of time. These are the properties that are most likely to cause problems in the immediate neighbourhood, such as encouraging anti-social behaviour, affecting the fabric of neighbouring properties, negatively affecting property prices and generally becoming a blight on the community.
- 1.3. The Council's Scheme of Delegation does not currently include provisions for Enforced sale which are set out in the Law of Property Act 1925 and so an amendment to the Scheme of Delegation is required in order to facilitate the use of this to implement the strategy.

## **2. Issues**

- 2.1. Enforced Sale is used to bring about a change in ownership. There are two key prerequisites:

- that bringing the property back into use has sufficient priority within the context of the Empty Homes Strategy, and
  - that there is an outstanding debt against the property owed to the Council; this debt may be through work in default charges or Council Tax arrears that are the subject of a County Court Final Charging Order.
- 2.2. Work in default charges may arise from the Council having to carry out works to the property to prevent its condition affecting adjoining properties or the neighbourhood. If the debt can not be recovered from the owner the usual debt recovery procedures will be followed with a charge being registered against the property.
  - 2.3. Where an outstanding debt is registered as a charge against the property the Council can enforce that charge and has all the powers and remedies available to a mortgagee under the Law of Property Act 1925. This means that the Council can obtain a court order allowing the property to be sold with all secured debts, being paid out of the sale proceeds.
  - 2.4. Many of the Council's charges have priority over any others registered. Thus, the Council's ability to recover costs will not be affected by the amount of equity the owner has in the property.
  - 2.5. Figures for 2012/13 demonstrate that the number of properties left vacant for over two years is increasing. This represents a wasted resource and blights local communities. Enforced sale demonstrates to our residents, who are affected by such properties, that the Council will act to improve their neighbourhood and demonstrates to owners that it will not tolerate properties simply being left to deteriorate.
  - 2.6. The council tax return for 2013 identified 1, 275 empty properties in the Borough of which 757 had been empty for longer than six months. This is an increase from the 2012 figure of 679 and the 2011 figure of 655, although there have been changes to the categorisation of empty homes which may have contributed to this increase. There are about 15 long term empty properties that are seriously dilapidated and affecting the local neighbourhood. It is expected that enforced sale will be used infrequently but officers consider that it is essential to have it available as part of the full range of enforcement powers.

### **3. Option considered and preferred solution**

- 3.1. The Council could consider whether to leave the responsibility for the use of enforced sale and compulsory purchase as a Council decision. It is recommended that the responsibility for enforced sale is delegated to the Public Protection Committee as this would align to their current remit. Due to the financial commitment required for Compulsory Purchase it is recommended that this is not delegated.
- 3.2. The proposed action is consistent with the Empty Homes strategy 2012 – 17 and the Housing Standards and Public Health Enforcement Policy.

### **4. Outcomes Linked to Corporate Priorities**

- 4.1. Returning Empty Homes back in to use contributes to the delivery of the Corporate Priority of a clean safe and sustainable borough.



## **5. Legal and Statutory Implications**

- 5.1. Enforced sale is a legal process under the Law of Property Act 1925, requiring strict adherence to the correct steps and notifications. The owner, if they can be identified, is kept fully informed of the process and their rights. The owner can if they wish stop the process by paying the debts owed or voluntarily selling the property.

## **6. Equality Impact Assessment**

- 6.1. Enforced sale recommendations will be solely based on the physical condition of the property and past history of compliance by the owner. There are therefore no differential equality impacts identified within this report.

## **7. Financial and Resource Implications**

- 7.1. Enforced Sale is essentially a debt recovery process which recoups debts owed to the Council; costs incurred in the process are also recoverable. At no time will the Council take ownership or responsibility for the property.
- 7.2. The owner may pay the debt before the process is completed, this will ensure the debt is repaid but the Council will not be able to recover staff costs incurred.
- 7.3. Empty properties brought back into use form part of the new homes bonus so such action can additionally attract government payments.

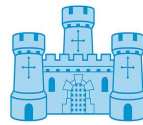
## **8. Major Risks**

- 8.1. There is a risk that the owner pays the debt and stops the process at a late stage. This does still achieve the aim of recouping debts and highlights to the owner that the Council is serious in endeavours to prevent homes standing empty. Sensitive handling of media will be necessary to prevent a risk of adverse comments from an owner affected by enforced sale. There is a risk the property is still not brought back into use in a timely fashion depending on the actions of a new owner. However the risk of this is significantly reduced than had no action been taken.
- 8.2. There is also a risk in not taking appropriate action, or at least considering it, arising from neighbour and police complaints.

## **9. Background papers**

Empty Homes Strategy 2012 - 2017  
Team Procedures for Enforced Sale and Compulsory Purchase – Jan 14

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## **Housing and Regeneration**

### **Team procedures for Enforced Sale and Compulsory Purchase**

#### **1. Background**

The Empty Homes Strategy identifies Newcastle-under-Lyme's approach for returning empty homes to use. This is a two stage approach starting with encouragement, support and persuasion, moving on to considering enforcement options. The enforcement options are detailed in the Empty Homes Strategy and range from requiring works to ensure the property is not a detriment or a danger to the neighbourhood moving on to more serious measures such as enforced sale and compulsory purchase.

#### **2. When to consider Enforced Sale**

There are two key prerequisites, that;

- returning the property to use has sufficient priority within the context of the Empty Homes Strategy.
- there is an outstanding debt against the property owed to the Council, this debt may be through work in default charges or Council Tax arrears.

Work in default charges may arise from the Council having to carry out works to the property to prevent its condition affecting adjoining properties or the neighbourhood. If the debt can not be recovered from the owner the usual debt recovery procedures will be followed with a charge being registered against the property.

#### **3. Enforced Sale Legislation - Law of Property Act 1925**

Where an outstanding debt is registered as a charge against the property the Council can enforce that charge and has all the powers and remedies available to a mortgagee under the Law of Property Act 1925. This means that the Council can obtain a court order allowing the property to be sold with all secured debts, being paid out of the proceeds.

Many of the Council's charges have priority over any others registered. Thus, our ability to recover costs will not be affected by the amount of equity the owner has in the property. However, if there is only a small amount of equity and it appears that the proceeds of a sale would be insufficient to recover funds due, other options may be considered more appropriate.

Appendix 1 sets out the statutory provisions where the registration of the land charge will take priority over other registered charges and also where interest can be claimed on the monies outstanding.

#### **4. Enforced Sale Process**

Where enforced sale is considered the appropriate action a report should be compiled seeking permission to proceed. Use of the Law of Property Act 1925 is not within the

constitution, therefore only Cabinet can approve its use or delegate this decision to the Public Protection Committee. This report should include;

- details of the owner or interested parties,
- copies of relevant correspondence with the owner,
- summary of activities to date to bring the property into use,
- details of outstanding debts,
- condition of the property and impact it being empty is having on the neighbourhood.

If approved to proceed the matter will be referred to Legal Services, legal processes will then include;

- Serving a notice under the Law of Property Act 1925 requiring payment of monies due within 3 months
- Writing to the owner, and any other chargees, advising the Council intends to enforce a sale. This letter should contain a statement of how the action is proportionate in accordance with The Human Rights Act 1998.
- Once default of payment is apparent, the Council can submit evidence to land registry applying for registration of the Charge.

When the Charge has been registered by the Land Registry, the property can be marketed for sale.

If the property is not registered with land registry the legal process is more complex and only certain debts can be registered.

## **5. Enforced Sale - Marketing of the Property**

Usually properties will be sold by auction as this demonstrates the best price possible. The Council's legal, surveyors and marketing costs can be deducted from the sale price.

## **6. Likelihood of Success**

An owner or interested party can stop the enforced sale at any point by occupying the property, selling it voluntarily or paying off the debt. The first two still achieve the aim of the Empty Homes Strategy; the third will not directly but should demonstrate the Council's commitment to dealing with empty homes. Compulsory purchase may be considered if the property continues to be empty.

## **7. When to consider Compulsory Purchase**

Compulsory purchase should be considered an action of last resort where there is no other realistic prospect of the property being brought back into use. Factors taken into consideration will be:

- length of time the property has been empty,
- history of compliance by the owner,
- previous enforcement activity carried out,
- detrimental impact the property is having on the area,
- impacts on adjoining and neighbouring properties,
- nuisance arising from the property including anti social behaviour and squatting,
- concerns identified by the police.

## **8. Legislative Basis for Compulsory Purchase Orders**

The Housing Act 1985, section 17 gives Local Authorities the power to acquire buildings and land through compulsory purchase for the purposes of providing housing accommodation.

## **9. Compulsory Purchase Process**

Where compulsory purchase is considered the best option a report must be prepared for Council. This is due to the serious nature of the action, potential cost implications and to meet the terms of the constitution. This report should include:

- a description of the property and its condition,
- description of the impact the property is having on neighbouring properties and the local community,
- land registry details of all owners and persons with an interest in the property,
- details of all actions to encourage the owners / interested parties to return the property to use,
- details of enforcement action taken to return the property to use,
- statement of why compulsory purchase is considered a suitable option,
- Statement that all previous attempts have failed to bring the property to use and no further ones can be identified apart from Compulsory Purchase,
- the Council's proposals for the property if successful,
- financial implications.

If agreed Legal Services will proceed with preparing the necessary paperwork for an application to the appropriate Government Office and notifying people identified as having an interest in the property. If a Compulsory Purchase order application is unopposed, the Government Office will normally issue a decision within two months. If it is opposed a public enquiry will be held.

Statements and evidence will need to be presented at any Public enquiry to support the Council's case. The Council is responsible for paying the administrative costs and expenses for the Inquiry.

If successful a General Vesting Declaration is made allowing the Council to take possession.

## **10. Compulsory Purchase - Marketing of the Property**

Usually properties will be put up for sale by auction as this demonstrates the best price possible. This should be done as soon as possible after possession.

## **11. Compulsory Purchase - Compensation**

Ultimately the owner is entitled to the full market value of the property.

## **12. Human Rights Act 1998**

Consideration of the provisions of the Human Rights Act 1998 must be taken account of by the Council for both actions. In particular, Part 1, Article 8 "the right to respect for... private and family life..., home and... correspondence", and Protocol 1, Article 1 "peaceful enjoyment of... possessions", need to be balanced against the general benefits and rights of neighbours and the surrounding community.

A statement that the intended action of the Council in exercising its powers is proportionate, in accordance with the Act, should be included in reports.

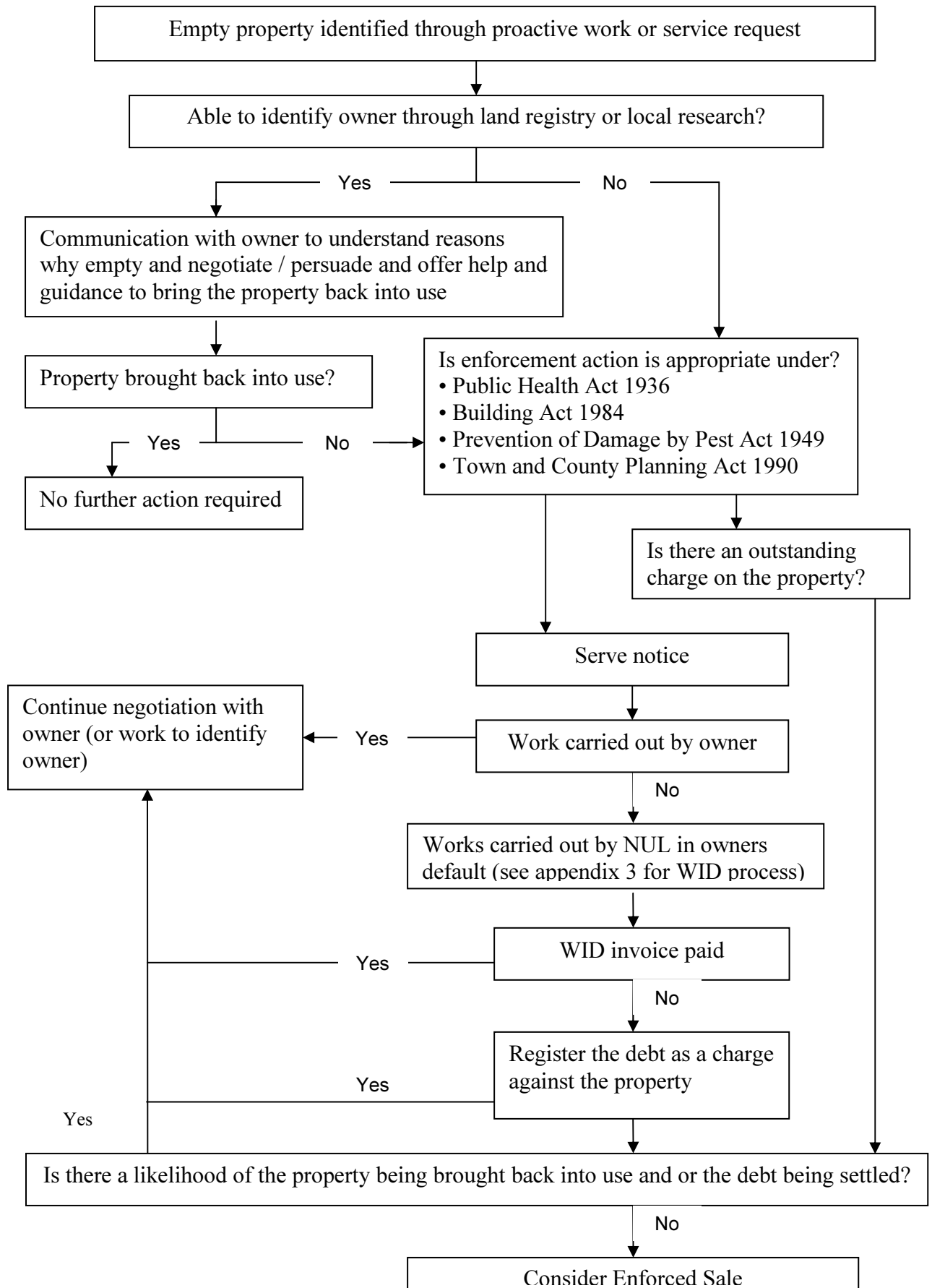
### 13. Procedure Summary

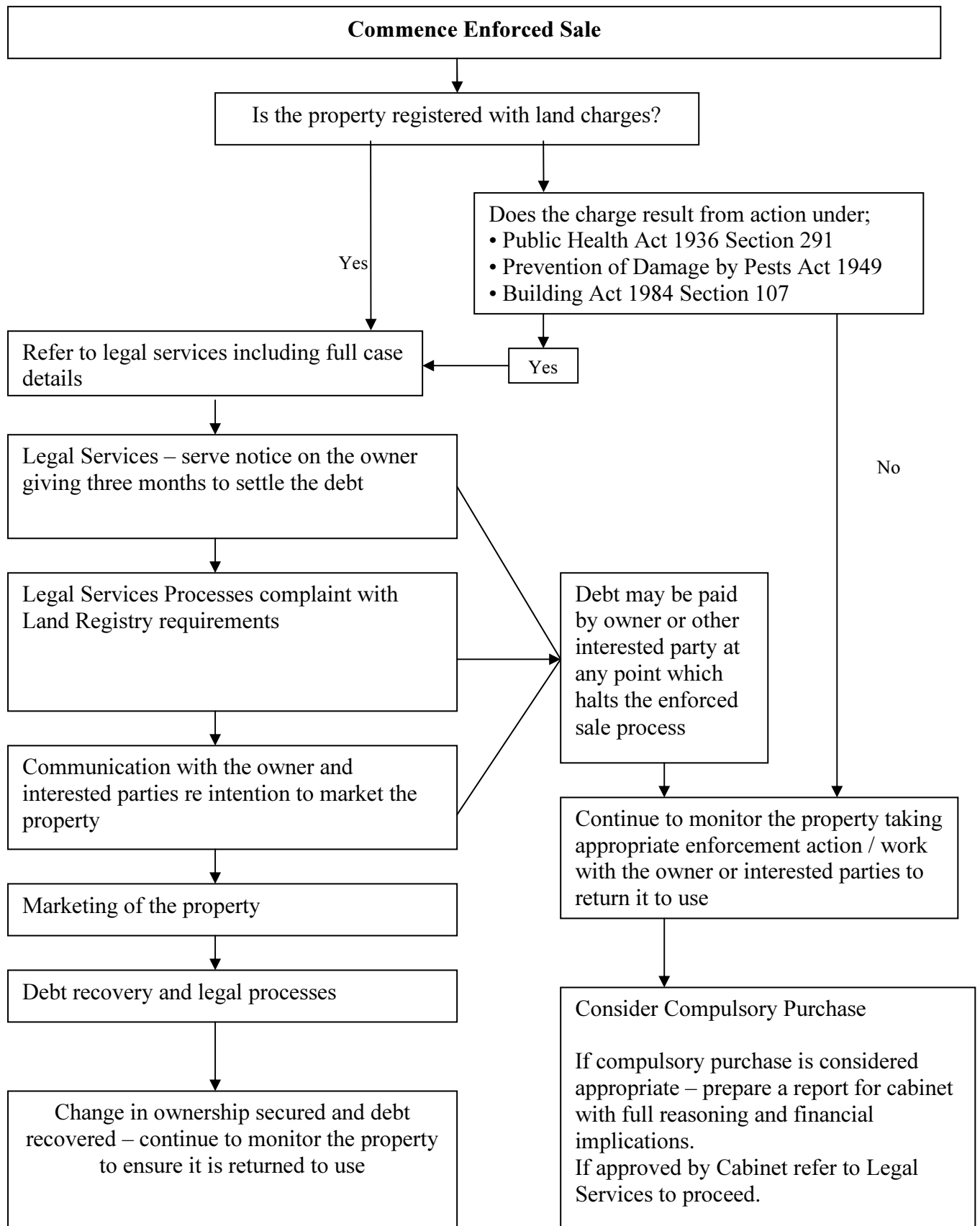
The flow chart in Appendix 2 gives a summary of the responsibilities and activities involved under the Empty Homes Strategy. Appendix 3 outlines the work in default process which may result in a debt being secured against the property.

#### Appendix 1: Statutes Which Allow an Outstanding Debt to be lodged as a Charge

Statute	Priority over other charges	Can interest be claimed
Public Health Act 1936, Section 291	YES	YES
Local Government (Miscellaneous) Provisions Act 1976, Section 33	YES	NO
Highways Act 1980, Section 305	YES	NO
Building Act 1984, Section 107	YES	NO
Housing Act 1985 paragraph 7 of Schedule 10 Ss 189/190 (repair notices) Ss 352/372 (HMO's)	YES	YES
Town and Country Planning Act 1990 and regulation 14(2) of the Town and Country Planning General Regulations 1992, Section 178	NO	NO
Environmental Protection Act 1990, Section 81A	YES	YES
Prevention of Damage by Pests Act 1949	YES	YES

## Appendix 2: Flow Diagram - Enforced Sale







### Appendix 3: Work in Default Process

#### Works in default of a statutory notice

