

# Public Document Pack

**Date of meeting** Monday, 28th April, 2014  
**Time** 10.00 am  
**Venue** Committee Room 1, Civic Offices, Merrial Street,  
Newcastle-under-Lyme, Staffordshire, ST5 2AG  
**Contact** Jan Barron - 742224

## Licensing Sub-Committee

### AGENDA

#### PART 1 – CLOSED AGENDA

- 1 Appendix A - Natural Justice Guidance Notes (Pages 1 - 2)
- 2 Appendix B Human Rights Guidance Notes (Pages 3 - 4)
- 3 Appendix C Procedure to be followed by the Sub-Committee (Pages 5 - 6)
- 4 Application For a Vary DPS. The Ironmarket, Newcastle (Pages 7 - 10)
- 5 DISCLOSURE OF EXEMPT INFORMATION  
To resolve that the public be excluded from the meeting during consideration of this item 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 Representation from Staffordshire Police (Pages 11 - 56)

**Members:** Councillors Hambleton, White 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.

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## 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.

### PROCEDURE TO BE FOLLOWED BY THE LICENSING SUB-COMMITTEE

#### NOTE:

All hearings will normally be held in public. However, the Licensing Sub-Committee may exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing or that part of the hearing taking place in public. A party or that party's representatives may be treated as a member of the public and therefore excluded from the meeting for all or part of the hearing, and all parties have the right to be represented and to call witnesses.

The Clerk to the Committee will have the right to ask questions on behalf of the Committee of any party to the proceedings.

#### PROCEDURE:

1. The Chair of the Sub-Committee will open the meeting and introduce the members of the committee and call upon the parties to identify themselves and their representatives and to identify any witnesses they intend to call.
2. The Chair of the Sub-Committee will call upon the Clerk to the Committee to explain to the parties the procedures which will be followed at the hearing. Unless the Chair directs otherwise, each party will normally have a maximum period of one hour in which to give further information and call any witnesses in support of their case. In every case, all parties will have an equal maximum period.
3. The Chair of the Sub-Committee will then normally call upon the interested party or the responsible authority which has made a relevant representation against the grant of an application to provide evidence in support of their representation.
4. The applicant will then have an opportunity to question that person
5. Members of the Sub-Committee will then have the opportunity to question that party or responsible authority.
6. Any person who has made relevant representations will then call any witness in support.
7. The applicant will then have an opportunity to question that witness.
8. Members of the Sub-Committee will then have the opportunity to question that person.
9. Stages 6 to 8 will then be repeated for each person making relevant representations.
10. The applicant will then have the opportunity to give evidence in response to the application and in response to the relevant representations which have been made.
11. The interested party or responsible authority will then have an opportunity to question the applicant.

## Appendix C

12. Members of the Sub-Committee will then have the opportunity to question the applicant.
13. Stages 10 to 12 will be repeated for any witnesses on behalf of the holder of the applicant.
14. The interested party or responsible authority will have the right to address the sub committee.
15. The applicant will have the right to address the Sub-Committee in summing up his case.
16. All parties will then leave the room while the Sub-Committee consider their decision.
17. The Sub-Committee will normally make their determination at the conclusion of the hearing, but when this is not possible, will make its determination within the period of five working days beginning with the day on which the hearing was held.

**Application to/for:** Vary Designated Premise Supervisor

**Submitted by:** Ironmarket, 21 Ironmarket, Newcastle under Lyme,  
Staffordshire ST5 1RH

**Portfolio:** Safer Communities

**Ward(s) affected:** Town

## **Purpose of the Report**

An application has been received from Admiral Taverns Limited on behalf of the Ironmarket public house, to vary the designated premise supervisor into the name of Mr Alan Macintosh Morton.

## **Recommendations**

The Sub-Committee must take such of the following steps as it considers appropriate for the promotion of the licensing objectives:

- (a) To take no further action.
- (b) To remove Mr Morton as the DPS.

## **1. Background**

An application to vary the DPS into the name of Mr Alan Macintosh Morton has been received from Admiral Taverns Limited. It was indicated on the application form that Admiral Taverns wished the application to have immediate effect under Section 38 of the Licensing Act and thus the application was processed during the 14 day representation period and a decision posted to Mr Morton on the 7<sup>th</sup> February 2014. On the 18<sup>th</sup> February 2014 a representation was received from Staffordshire Police objecting to grant of the licence.

## **2. Consultation**

On the 18<sup>th</sup> February 2014, Staffordshire Police forwarded a representation on the basis that to grant the licence would undermine the prevention of crime and disorder licensing objective. A copy of the letter is attached at appendix 1. The representation gives details of how, in March 2013, Mr Morton was arrested for the stabbing of a customer whilst he was the designated premise supervisor at the Moonraker, Three Bridges Road, Crawley, Sussex. Mr Morton was released with no further action being taken as the injured man did not wish to make a complaint. At the time of this arrest Mr Morton also confessed to recreational drug use. Following a meeting between Sussex Police and the Premise Licence holders, Home Counties Pub Company, the Moonraker was temporarily closed and Mr Morton was removed as the DPS.

## **3. Policy Considerations**

### Licensing Objectives

The Licensing Act 2003 requires the Council to carry out its various licensing functions so as to promote the following four licensing objectives:

- i. the prevention of crime and disorder
- ii. public safety
- iii. the prevention of public nuisance
- iv. the protection of children from harm

The 2003 Act States:

“37 Applications to vary licence to specify individual as premise supervisor:

- 4 The holder of the premises licence must give notice of his application (inter alia) to:
  - (a) To the Chief Officer of Police for the police area in which the premises are situated.
  - (5) Where a chief officer of the police notified under subsection (4) is satisfied that the exceptional circumstances of the case are such that granting the application would undermine the crime prevention objective, he must give the relevant licensing authority a notice stating the reasons why is so satisfied.
  - (6) The chief officer of police must give that notice within the period of 14 days beginning with the day on which he is notified of the application under subsection (4).”

“38 Circumstances in which Section 37 application given interim effect.

- (1) this section applies where an application made in accordance with Section 37, in respect of a premises licence which authorises the supply of alcohol, includes a request that the variation applied for should have immediate effect.

“39 Determination of Section 37 Application

- (2) subject to subsection (3), the relevant licensing authority must grant the application
- (3) where a notice is given under Section 37 (5) ....the authority must hold a hearing....

The guidance issued under Section 182 of the Licensing Act 2003 (amended 2013) at paragraph 4.26 says:

“4.26 The Police may object to the designation of a new DPS where, in exceptional circumstances, they believe that the appointment would undermine the crime prevention objective. The Police can object where for example, a DPS is first specified in relation to a particular premises and the specification of that DPS in relation to the particular premises gives rise to exceptional concerns.”

## Policy Statement

### The Licensing Act 2003

The Licensing Act 2003 require the Council to publish a “Statement of Licensing Policy” that sets out the policies the Council will generally apply to promote the licensing objectives when making decisions on applications made under the Act.

The Council made a number of policy decisions in its Statement of Licensing Policy. The following policy decision is relevant to the application:

- i. the prevention of crime and disorder – (paragraph 2.12)

Statutory Guidance relating to the Licensing Objectives relevant to the application:

- (i) Crime and disorder - (paragraphs 2.1-2.7 and 4.18-4.29)

Copies of the Council’s Statement of Licensing Policy and the Governments Statutory Guidance will be available at the Sub-Committee meeting.

#### **4. Comments.**

In making their decision on the application, the Sub-Committee are also obliged to have regard to Statutory Guidance and the Council's own statement of Licensing Policy. The Sub-Committee must also have regard to all the representations made and the evidence they hear. However, the Sub-Committee must disregard any objections that do not relate to the promotion of the relevant licensing objectives.

The Sub-Committee must take such of the following steps as they consider appropriate for the promotion of the licensing objectives as set out in the paragraph 3 (i) above:

- i. take no further action
- ii. remove Mr Morton as the DPS

The Sub-Committee are asked to note that they may not reject the application merely because they consider it desirable to do so. It must actually be appropriate in order to promote the relevant licensing objective.

Date of hearing: Monday 31<sup>st</sup> March 2014

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

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