

Public Document Pack

| | |
|------------------------|---|
| Date of meeting | Tuesday, 1st April, 2014 |
| Time | 1.30 pm |
| Venue | Council Chamber, Civic Offices, Merrial Street, Newcastle-under-Lyme, Staffordshire, ST5 2AG |
| Contact | Ms Janette Barron extension 2224 |

CABINET PANEL AGENDA

PART 1 – OPEN 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 Cabinet Panel | (Pages 5 - 6) |
| 4 | Application For a Scrap Metal Dealers Collection Licence - Mr J N Woolley | (Pages 7 - 8) |
| 5 | DISCLOSURE OF EXEMPT INFORMATION | |

To resolve that the public be excluded from the meeting during consideration of the attached report, 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
- Background Information**
- (Pages 9 - 24)

Members: Councillors Mrs Beech, Snell and Williams

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.

This page is intentionally left blank

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 considering allegations against Members you should have regard to the provisions of the Human Rights Act 1998 which embody the rules of natural justice.

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. These 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.

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

NOTE In this context it is also particularly important for members to observe the rule against bias.

PROCEDURE TO BE FOLLOWED BY THE CABINET PANEL

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.

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 for: Scrap Metal Dealer – Collector’s Licence.

Submitted by: Mr John Noah Woolley 518 Hartshill Road
Hartshill Stoke on Trent
Staffordshire ST4 6AF

Ward(s) affected: All Wards in Newcastle under Lyme Borough.

Purpose of the Report

An application has been received from John Noah Woolley for the grant of a Scrap Metal Dealer – Collectors Licence

Recommendations

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

1. Background

- 1.1 Mr Woolley has applied for a Scrap Metal Dealer Collector’s licence. A requirement of the application process is to provide a disclosure from Disclosure Scotland at a basic level. Mr Woolley did not have his DBS with him at the time of the application and completed and signed a Declaration of Convictions that his only offence was shoplifting in 2008 -2009. In view of this, the application was granted. When the DBS was received it revealed that Mr Woolley had been convicted of offences each year from 2006 to 2010 approximately 20 offences. A copy of the signed Declaration of Convictions and the DBS are at Appendix 1.

2. Issues

- 2.1 Section 3 (1) of the Scrap Metal Dealers Act 2013 provides that a Local Authority must not issue a Scrap Metal Licence unless it is satisfied that the applicant is a suitable person to carry on a business as a Scrap Metal Dealer.
- 2.2 Section 3 (2) of the Act provides, “In determining whether the applicant is a suitable person the authority may **have regard to any information which it considers to be relevant, including in particular –**
- (a). whether the applicant or any site manager has been convicted of any **relevant offence.**”
- 2.4 The Scrap Metal Dealer Act 2013 Schedule 1 says:
- “Offence of making a false statement.
- (1) The local authority may request (either when the application is made or later) that the applicant provide such further information as the authority considers relevant for the purpose of considering the application.
- 5 An applicant who in an application or in response to a request under paragraph 4
- (a) makes a statement knowing it to be false in a material particular, or
- (b) recklessly makes a statement which is false in a material particular,
- is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 (£1,000) on the standard scale.”

2.5 The Theft Act 1986, Offences relating to stolen goods:

“Handling Stolen goods

22

(1) a person handles stolen goods if (otherwise than in the course of the stealing) knowing or believing them to be stolen goods he dishonestly receives the goods, or dishonestly undertakes or assists on their retention, removal, disposal or realisation by or for the benefit of another person, or if he arranges to do so”.

2.6 Since his application with the Council, Mr Woolley has also been licensed as a Scrap Metal Collector by Stoke on Trent City Council and Staffordshire Moorlands, copies of the licences are at Appendix 2.

2.7 Having considered the foregoing, do the Panel consider that Mr Woolley remains a suitable person to continue to hold a Scrap Metal Dealer Collector’s Licence.

2.8 Mr Woolley has been invited to attend the meeting and also make written submission in connection with his application. A copy is at Appendix 3.

3. Options

3.1 The Panel can:

- (a) to take no action (in which case the licence will continue for the full term of 3 years).
- (b) revoke the licence.

4. Proposal

4.1 That the Panel considers the options.

5. Reason for the Proposal

5.1 To continue to ensure the safety of the public using this form of transport.

6. Outcomes Linked to Sustainable Community Strategy and Corporate Priorities

6.1 In line with the Council’s objective – creating a safer Borough.

7. Crime and Disorder

7.1 Reducing the incidence of crime.

8. Human Rights

8.1 Article 6 (i) guarantees an applicant a fair hearing
Article 14 guarantees no discrimination

Date of hearing: Tuesday 1st April 2014

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

Document is Restricted

This page is intentionally left blank

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

Document is Restricted

This page is intentionally left blank

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

Document is Restricted

This page is intentionally left blank

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

Document is Restricted

This page is intentionally left blank

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

Document is Restricted

This page is intentionally left blank

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

Document is Restricted

This page is intentionally left blank