

# Public Document Pack

**Date of meeting**      Tuesday, 29th April, 2014  
**Time**                      2.00 pm  
**Venue**                      Committee Room 2, Civic Offices, Merrial Street,  
Newcastle-under-Lyme, Staffordshire, ST5 2AG  
**Contact**                      Jan Barron 2224

## **Cabinet Panel. Application for a Scrap Metal Dealers Licence**

### **AGENDA**

#### **PART 1 – OPEN AGENDA**

##### **1 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 the disclosure of exempt information as defined in paragraphs 1,2 and 7 in Part 1 of Schedule 12A of the Local Government Act, 1972.

##### **2 GUIDANCE NOTES (Pages 3 - 8)**

Guidance notes for: Natural Justice; Human Rights and the Procedure to be followed by the Cabinet Panel

##### **3 Application for a Scrap Metal Dealers Collection Licence - Mr LW (Pages 9 - 12)**

##### **4 Background Information (Pages 13 - 18)**

##### **5 Response received from Staffordshire Police (Pages 19 - 22)**

**Members:**      Councillors

**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 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.

## AGENDA ITEM 3

### Appendix C

#### **PROCEDURE TO BE FOLLOWED BY THE CABINET PANEL**

#### **SCRAP METAL DEALER HEARINGS**

#### **NOTE:**

All hearings will normally be held in public. However, the Panel may excluded 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 part 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.

#### **PROCEDURE:**

1. The Chair of the Panel will open the meeting and introduce the members of the Panel 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 Panel will call upon the Clerk of 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 Panel will then normally call upon those persons the Council consults with to submit objections regarding the applicant's suitability, in objection the Borough Council will always consult with Staffordshire Police and the Environment Agency, or alternatively the Council's Representative, to provide evidence in support of the objection.
4. The applicant will then have an opportunity to question those persons.
5. Members of the Panel will then have the opportunity to question those persons.
6. Any person who has made a relevant objection will then call any witness in support.
7. The applicant will then have an opportunity to question that witness.
8. Members of the Panel will then have the opportunity to questions that person.
9. Stages 6 to 8 will then be repeated for each person making relevant objections.
10. The applicant will then have the opportunity to give evidence in response to the application and in response to the relevant objections which have been made.

11. Those persons that have been consulted by the Council will then have an opportunity to question the applicant or the Council's Representative
12. Members of the Panel will then have the opportunity to question the applicant.
13. Stages 10 to 12 will be repeated for any witnesses on behalf of the applicant.
14. Those persons that have submitted an objection or the Council's Representative will have the right to address the Panel.
15. The applicant will have the right to address the Panel in summing up his case.
16. All parties will then leave the room while the Panel consider their decision.
17. The Panel will normally make their determination at the conclusion of the hearing, but when this is not possible, will make its determination as soon as possible after the day on which the hearing was held.



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