

Public Document Pack

Date of meeting **Monday, 9th June, 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 – OPEN AGENDA

- 1 Appendix A - Natural Justice Guidance Notes (Pages 3 - 4)**
- 2 Appendix B Human Rights Guidance Notes (Pages 5 - 6)**
- 3 Application for a Temporary Event at Oakanna Farm, Leycett (Pages 7 - 10)**
Lane, Newcastle

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. Should you require this service, please contact Member Services during the afternoon prior to the meeting.

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.

Application to/for: Hearing for Temporary Event Application

Submitted by: Staffordshire Police and Environmental Health

Portfolio: Safer Communities

Ward(s) affected: Madeley

Purpose of the Report

An application for a Temporary Event has been received for Oakanna Farm, Leycett Lane, Newcastle under Lyme, Staffordshire ST5 6AD

Recommendations

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

- (a) To grant the application as requested.
- (b) To reject the application.

1. Details of Application

Applicants: Mr Benjamin Adam Nixon

Premises: Oakanna Farm, Leycett Lane, Newcastle under Lyme, Staffordshire, ST5 6AD

Application for: Temporary Event to be held on Saturday 28th June 2014

Details of Requested Application:

LIVE MUSIC (Indoors) – Current	LIVE MUSIC (Indoors) – Requested
NONE	12.00pm TO 11.20pm
SUPPLY OF ALCOHOL (on and off the premises) – Current	SUPPLY OF ALCOHOL (on and off the premises) – Requested
NONE	12.00pm to 11.35pm
OPENING HOURS OF THE PREMISE – Current	OPENING HOURS OF THE PREMISE (Indoors) – Requested
NONE	12.00pm to 12.00am

2. Recommendations

1. Introduction

Mr Benjamin Adam Nixon submitted a Temporary Event notice on 8th May 2014 in accordance with Section 100 of the Licensing Act 2003.

1.2 For member's information, under Section 100 of the Licensing Act 2003 a person must notify the licensing authority within 10 working days prior to the event if one or more licensable activities are proposed to take place under the authority of a temporary Event Notice.

1.3 The above section requires that:

The applicant is aged over 18
They have submitted the Notice within the correct timescale
The prescribed fee is paid with the Notification.

Should the above criteria be met by the applicant there is no discretion given to the authority to refuse or grant a Temporary Event Notice, as the applicant is merely serving notice on the authority that the event will taking place, and the authority must, within 48 hours, acknowledge receipt of the notice. In effect the notice itself constitutes the authorisation for the authority. There are no further requirements of the local authority unless a representation is received from the Chief of Police for the licensing area and/or the Environmental Health Department.

3. Consultation

Representations have been received from both responsible authorities stating that to grant the licence would undermine the licensing objectives for the Prevention of Crime and Disorder, The Prevention of Public Nuisance and Public Safety.

4. 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

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 decisions are relevant to the application:

- i. the prevention of crime and disorder – (paragraph 2.12 and 4.4)
- ii. public safety - (paragraph 2.15 and 4.1)
- iii. the prevention of public nuisance – (paragraph 4.2)
- iv. the protection of children from harm – (paragraph 2.10 and 4.3)

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

- (i) Crime and disorder - (paragraphs 2.1 to 2.7)
- (ii) Public safety - (paragraphs 2.8 to 2.17).
- (iii) Public nuisance - (paragraphs 2.18 to 2.24).
- (iv) Protection of children from harm – (paragraphs 2.25 to 2.35).
- (v) Police and Environmental Health intervention – (paragraph 7.31 to 7.35).

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

5. 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 four 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 above:

- i. grant the application as requested.
- ii. to reject the application.

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 licensing objectives

Date of hearing: MONDAY 9TH JUNE 2014

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