

To the Chair and Members  
of the  
LICENSING SUB-COMMITTEE

Julia Cleary  
742227

28 September 2011

Dear Sir/Madam

A meeting of the **LICENSING SUB-COMMITTEE** will be held in **COMMITTEE ROOM 1, CIVIC OFFICES, MERRIAL STREET, NEWCASTLE** on **MONDAY, 24 NOVEMBER 2008** at **2.00pm**.

**A G E N D A**

Details of the procedure to be followed by the Sub-Committee together with Guidance Notes relating to Human Rights Act 1988 are attached.

1. To consider the report of your Officers on items requiring decisions. (white paper)

Yours faithfully

**P W CLISBY**

Head of Central Services

## **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 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.
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.

**NEWCASTLE-UNDER-LYME BOROUGH COUNCIL**

**REPORT OF THE EXECUTIVE MANAGEMENT TEAM TO THE  
LICENSING SUB-COMMITTEE**

**24 November 2008**

1. **APPLICATION FOR TEMPORARY EVENT NOTICES – FLUID, 95-97 HIGH STREET,  
NEWCASTLE UNDER LYME.**

1. **Details of Applications**

- (a) **Applicant:** Mr David Wood
- (b) **Premises:** Fluid, 95-97 High Street, Newcastle under Lyme
- (c) **Applications for:** Temporary Event Notices  
**(Appendix A – blue paper)**
- (d) **Licensable Activities** The sale by retail of alcohol
- (copy of current licensable activities attached at **Appendix B (yellow paper)**).
- The provision of regulated entertainment
- The provision of late night refreshment
- (e) **Dates and times of events**
- |                           |                |
|---------------------------|----------------|
| Sunday 30 November 2008   | 02.00 to 03.00 |
| Tuesday 4 December 2008   | 02.00 to 03.00 |
| Saturday 6 December 2008  | 02.00 to 03.00 |
| Sunday 7 December 2008    | 02.00 to 03.00 |
| Thursday 11 December 2008 | 02.00 to 03.00 |
| Saturday 13 December 2008 | 02.00 to 03.00 |
| Sunday 14 December 2008   | 02.00 to 03.00 |
| Thursday 18 December 2008 | 02.00 to 03.00 |
| Saturday 20 December 2008 | 02.00 to 03.00 |
| Sunday 21 December 2008   | 02.00 to 03.00 |
| Thursday 25 December 2008 | 02.00 to 03.00 |
| Saturday 27 December 2008 | 02.00 to 03.00 |
| Sunday 28 December 2008   | 02.00 to 03.00 |
- (f) **Location** Fluid, 95-97 High Street, Newcastle under Lyme.

2. **Consultation**

Staffordshire Police having been notified of these applications have objected to the permitted temporary activities. A copy of their objections are attached at **Appendix C (white paper)**.

3. **Policy Considerations**

(a) **Licensing Objectives**

The Licensing Act 2003 requires the premises user of a permitted temporary activity to provide the Police Service with a notice of the application. Under section 105 of the Licensing Act 2003 Staffordshire Police Service can then object on the sole ground of the Crime and Disorder Objective.

On receipt of such an application the Licensing Authority must hold a hearing to consider the objection notice.

Should the Licensing Authority consider that the Crime Prevention Objective would be offended by the permitted temporary activity then it must issue a counter notice to the applicant and the Chief Police Officer of Staffordshire Police.

(b) **Policy Statement**

The Licensing Act 2003 required the Council to publish a "Statement of Licensing Policy" that set out the policies the Council will generally apply to promote the licensing objectives when making decisions on permitted temporary activities.

The following policy decisions are relevant to this application:-

- I. Paragraph 8 – Permitted Temporary Activities.

(c) **Statutory Guidance**

- (i) National guidance regarding Permitted Temporary Activities at Paragraph 7.1 – 7.29.

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

5. **Comments**

The Licensing Sub-Committee have 2 options available; they must either:

1. Accept the Police evidence and issue a counter notice; or
2. Reject the Police evidence and take no action and allow the event.