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Date of meeting	Monday, 3rd December, 2012
Time	7.00 pm
Venue	Civic Offices, Merral Street, Newcastle Under Lyme, Staffordshire ST5 2AG
Contact	Geoff Durham

Public Protection Committee

AGENDA

PART 1– OPEN AGENDA

12 REPORTS FROM OFFICERS

To consider the reports of your officers.

13 Results of Consultation With Private Hire Vehicle Licence Holders (Pages 43 - 44)

14 Pigeon Control: Newcastle Town Centre (Pages 45 - 50)

15 Environmental Protection Act 1990, Section 33, 34, 34(2A) - Fly Tipping (Pages 51 - 52)

16 Clean Neighbourhoods and Environment Act 2005 - Fixed Penalty Notices (1) (Pages 53 - 56)

17 Clean Neighbourhoods and Environment Act 2005 - Fixed Penalty Notices (2) (Pages 57 - 58)

18 URGENT BUSINESS

To consider any business which is urgent within the meaning of Section 100(B)4 of the Local Government Act.

Members: Councillors Allport, Bailey, Hailstones, Mrs Hailstones, Mrs Heesom, Kearon, Matthews, Olszewski (Chair), Miss Olszewski (Vice-Chair), Robinson, Miss Walklate, Welsh and Mrs Williams

'Members of the Council: If you identify any personal training / development requirements from the items included in this agenda or through issues raised during the meeting, please bring them to the attention of the Committee Clerk at the close of the meeting'

Officers will be in attendance prior to the meeting for informal discussions on agenda items.

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 forth 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.



GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS FOR APPLICANTS FOR THE GRANT AND RENEWAL OF LICENCES TO DRIVE HACKNEY CARRIAGES AND PRIVATE HIRE VEHICLES

GENERAL POLICY

1. Each case will be decided on its own merits
2. The Council will, as far as is possible, ensure that all persons holding a licence to drive Hackney Carriages or private hire vehicles are fit and proper persons. In doing so, the Council will take into account previous convictions including, where relevant, 'spent' convictions.
3. The Council will always put the protection of the public first when considering the relevance of convictions recorded against an applicant for a licence.
4. A person with a conviction for serious crime need not be permanently barred from obtaining a licence but will be expected to remain free of conviction for an appropriate period, before an application is considered. However, remaining free of conviction for a specified period may not be sufficient to show that a person is fit and proper and additional evidence may be required.
5. There may be occasions where it is appropriate to depart from the guidelines when making a decision on an application. For example, where the offence is a one-off and there are mitigating circumstances or alternately, where there are many or continuous offences which may show a pattern of offending and unfitness.
6. The following examples give a general guide as to the action that might be taken where convictions are recorded against an applicant.

(a) Dishonesty

Members of the public using Hackney Carriages and private hire vehicles expect the driver to be honest and trustworthy. It would be easy for a dishonest driver to take advantage of the public.

For these reasons, a serious view will be taken of any conviction involving dishonesty. In general, if an application is made within the first 3 to 5 years from the date of a conviction or from the date of release from jail where a custodial sentence has been imposed, it is likely that it will be refused.

Where an application is made within the first three years since the conviction or the date of release from jail, where a custodial sentence has been

imposed, for any of the following offences, the application will normally be refused:-

- Theft
- Burglary
- Fraud
- Benefit fraud (including offences under ss11A and 112 of the Social Security Administration Act 1992)
- Blackmail
- Handling or receiving stolen goods
- Forgery
- Conspiracy to defraud
- Obtaining money or property by deception
- Other deception
- Or similar offences to those above which may replace any of the above offences

When a period of three years from conviction or the date of release from jail, where a custodial sentence has been imposed has passed, consideration will be given to the circumstances of the offence and any evidence to show that an applicant is a fit and proper person to hold a licence.

(b) Violence

As Hackney Carriage and private hire vehicle drivers maintain close contact with the public, a firm line will be taken with applicants who have convictions for violence. Where the commission of an offence involves loss of life, a licence will normally be refused. In other cases, a period of three to ten years free of conviction from the date of conviction or the date of release from jail, where a custodial sentence has been imposed will generally be required before an application is likely to be considered favourably. The nature and seriousness of the offence(s) will be taken into consideration.

In particular:-

- (i) An application will normally be refused where the applicant has a conviction for an offence of:-
 - Murder
 - Manslaughter
 - Manslaughter or culpable homicide while driving
 - Or similar offence or offences which replace the above offences
- (ii) An application will normally be refused for a period of five years from the date of the conviction or the date of release from jail, where a custodial sentence has been imposed if the applicant has a conviction for:-
 - Arson
 - Malicious wounding or grievous bodily harm which is racially aggravated
 - Assault occasioning actual bodily harm which is racially aggravated

- Assault with intent to cause grievous bodily harm
- Assaulting a police officer in the execution of his duties
- Malicious wounding
- Robbery
- Racially aggravated criminal damage
- Racially aggravated fear or provocation of violence
- Racially aggravated intentional harassment, alarm or distress
- Racially aggravated harassment
- Racially aggravated putting people in fear of violence
- Riot
- Possession of an offensive weapon
- Possession of a firearm
- Violent disorder
- Or any arrestable offence involving violence (an arrestable offence is defined as an offence committed by a person of age 21 years or over and on conviction for the first offence may be sentenced to a term of imprisonment of five years or where the penalty is fixed by law)

(iii) An application will normally be refused for a period of three years from the date of conviction or the date of release from jail, where a custodial sentence has been imposed, where the applicant has a conviction for:-

- Common assault
- Racially aggravated common assault
- Assault occasioning actual bodily harm
- Affray
- Racially aggravated harassment, alarm or distress
- Resisting arrest
- Obstructing a police officer in the execution of his duty
- Criminal damage
- Any similar offence or offences which replace the above offences

(c) Drugs

An application will normally be refused if an applicant has a conviction for an offence that relates to the supply or importation of drugs and the date of the conviction or the date of release from jail, where a custodial sentence has been imposed, is less than five to ten years before the date of the application. However, after five years from the date of such a conviction or the date of release from jail, where a custodial sentence has been imposed, the circumstances of the offence and any evidence which shows that a person is now a fit and proper person to hold a licence will be taken into consideration.

An application will normally be refused where the application is made within three to five years from the date of a conviction or the date of release from jail, where a custodial sentence has been imposed for an offence relating to the possession of drugs. However, after a period of three years from the date of such a conviction or the date of release from jail, where a custodial sentence has been imposed, consideration will be given to the circumstances

of the offence and any evidence to show that an applicant is a fit and proper person to hold a licence.

An application will normally be refused where an applicant has more than one conviction for offences related to the possession of drugs and the last conviction or the date of release from jail, where a custodial sentence has been imposed, is less than five years before the date of the application.

Where evidence is available that an applicant who has convictions for drug related offences has been addicted to drugs, they will have to produce evidence that shows that they have been free of drug taking for at least five years after successfully completing a drug treatment programme.

(d) Sexual and Indecency Offences

As the driver of Hackney Carriages and private hire vehicles often carry passengers who are alone, or may be vulnerable, applicants who have convictions for rape, indecent assault, any sexual offence involving children and any conviction for an offence under the Sexual Offences Act 2003 will normally be refused a licence.

Where an applicant has a conviction for a sexual offence such as indecent exposure, they will normally be refused a licence until they can show a substantial period usually between five and ten years free of any such convictions from the date of conviction or the date of release from jail where a custodial sentence has been imposed before an application is made.

After a period of five years from the date of a conviction or the date of release from jail, where a custodial sentence has been imposed, consideration will be given to the circumstances of the offence and any evidence to show that an applicant is a fit and proper person to hold a licence.

When considering applications, the Council may take into account any information of a sexual nature which does not amount to a criminal offence that is brought to its attention where that information may indicate that an applicant may not be a fit and proper person to hold a licence.

(e) Motoring Convictions

(i) Disqualification

Where an applicant had been disqualified from driving by the Courts for a serious traffic offence under Category 'A' of Annex (i), an application will generally be refused unless a period of five years free of conviction has passed since the return of the DVLA licence.

Where an applicant has been disqualified from driving by the Courts for a serious traffic offence under Category 'B' of Annex (i), an application will generally be refused unless a period of five years free of conviction has passed since the return of the DVLA licence unless the offence was an isolated one, in which case, a period of not less than 2 years shall have passed.

Where a disqualification is imposed by a court in a 'totting-up' case, i.e. where an applicant has been disqualified because of several

driving offences, an application will generally be refused unless a period of one year free of conviction has elapsed since the return of the DVLA driver licence.

In 'totting-up' cases where a court does not impose a disqualification because of exceptional circumstances, then because the Council apply different criteria to the courts, an application will generally be refused unless an applicant can show a period of 1 year free of conviction from the date of the last court appearance.

(ii) **Serious Traffic Offences**

Where an applicant has a conviction for a serious traffic offence in Category 'A' Annex (i) and a period of disqualification has not been imposed by the courts, an application will normally be refused where an application is made in the last five years following the date of the last conviction.

Where an applicant has a conviction for a serious traffic offence in Category 'B' Annex (i) and a period of disqualification has not been imposed by the courts, an application will normally be refused where an application is made in the last five years following the date of the last conviction unless the offence was an isolated one.

Where an applicant has had more than one conviction for a serious traffic offence in either Category 'A' or 'B' of Annex (i) and the courts have not imposed a period of disqualification, an application will normally be refused where an application is made in five years following the date of the last conviction.

(iii) **Other Traffic Offences**

Normally, isolated convictions for other traffic offences should not prevent someone obtaining a licence. However, the number, type and the frequency of these types of offence will be taken into account. If there are several convictions for these types of offence, an applicant will normally be expected not to have been convicted of an offence in the six months before an application is made.

A list of relevant offences is shown at Annex (ii). However, this is not an exhaustive list and there may be other offences which may be relevant.

(f) Offences Under the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976 and any Hackney Carriage Byelaws (The Acts)

One of the main purposes of the licensing regime set out in 'The Acts' is to ensure the protection of the public. For this reason, a serious view will be taken of convictions for offences under the legislation, particularly offences of illegal plying for hire, when deciding if a person is a fit and proper person to hold a licence.

In particular, an application will normally be refused where an applicant has more than one conviction for an offence under 'The Acts' in the two years preceding the date of the application.

(g) Drunkenness

(i) In a Motor Vehicle

The manner in which drunkenness in a motor vehicle will be dealt with is outlined in Motoring Offences at paragraph 'e' of these guidelines.

(ii) Not in a Motor Vehicle

Where an applicant has an isolated conviction for drunkenness, this need not stop an applicant from getting a licence. In some cases, a warning may be appropriate. However, where an applicant has a number of convictions for drunkenness, it could indicate a medical problem, which would require further investigation including a medical examination and the possible refusal of a licence.

(h) Spent Convictions

The Council will only take 'Spent Convictions' into consideration if it is considered they are relevant to the application.

(i) Formal Cautions and Fixed Penalty Notices

For the purposes of these guidelines, the Council will treat Formal Cautions issued in accordance with Home Office guidance and fixed penalty notices as though they were a conviction before the courts.

SERIOUS TRAFFIC OFFENCES

CATEGORY 'A'	
Offence Code	Offence
Careless Driving	
CD40	Causing death through careless driving when unfit through drink
CD50	Causing death through careless driving when unfit through drugs
CD60	Causing death through careless driving with alcohol level above the limit
CD70	Causing death through careless driving then failing to supply a specimen for analysis
Reckless/Dangerous Driving	
DD40	Dangerous driving
DD60	Manslaughter or culpable homicide while driving a vehicle
DD80	Causing death by dangerous driving
Miscellaneous Offences	
MS50	Motor racing on a highway
Theft and Unauthorised Taking	
UT50	Aggravated taking of a vehicle

PLEASE NOTE:

Any offence of aiding, abetting or procuring the above offences, the offence code will have the **0** replaced by a **2**.

Any offence of causing or permitting the above the offences, the offence code will have the **0** replaced by a **4**.

Inciting any of the above offences, the offence code will have the **0** replaced by a **6**.

CATEGORY 'B'	
Offence Code	Offence
Accident Offences	
AC10	Failing to stop after an accident
AC20	Failing to give particulars or report an accident within 24 hours
BA10	Driving whilst disqualified by order of the court
BA30	Attempting to drive whilst disqualified by order of the court
Careless Driving	
CD10	Driving without due care and attention
CD20	Driving without reasonable consideration for other road users
CD30	Driving without due care and attention or without reasonable consideration for other road users
Construction and Use Offences	
CU10	Using a vehicle with defective brakes
CU20	Causing or likely to cause danger by use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition
CU30	Using a vehicle with defective tyre(s)
CU40	Using a vehicle with defective steering
CU50	Causing or likely to cause danger by reason of load or passengers
Drink or Drugs	
DR10	Driving or attempting to drive with alcohol level above limit
DR20	Driving or attempting to drive while unfit through drink
DR30	Driving or attempting to drive then failing to supply a specimen for analysis
DR40	In charge of a vehicle while alcohol above limit
DR50	In charge of a vehicle while unfit through drink
DR60	Failure to provide specimen for analysis in circumstances other than driving or attempting to drive when unfit through drugs
DR70	Failing to provide a specimen for breath test
DR80	Driving or attempting to drive when unfit through drugs
DR90	In charge of a vehicle while unfit through drugs
Insurance Offences	
IN10	Using a vehicle uninsured against third party risks
Licence Offences	
LC30	Driving after making a false declaration about fitness when applying for a licence
LC40	Driving a vehicle after having failed to notify a disability
Miscellaneous Offences	
MS70	Driving with uncorrected defective eyesight

PLEASE NOTE:

Any offence of aiding, abetting or procuring the above offences, the offence code will have the **0** replaced by a **2**.

Any offence of causing or permitting the above the offences, the offence code will have the **0** replaced by a **4**.

Inciting any of the above offences, the offence code will have the **0** replaced by a **6**.

If any of the offences in **Category 'B'** involve a licensed Hackney Carriage or private hire vehicle, they will be treated as though they are a **Category 'A'** offence.

OTHER TRAFFIC OFFENCES

Offence Code	Offence
LC20	Driving otherwise than in accordance with a licence
LC50	Driving after a licence has been revoked or refused on medical grounds
MS10	Leaving a vehicle in a dangerous position
MS20	Unlawful pillion riding
MS30	Play street offences
MS60	Offences not covered by other codes
MS80	Refusing to submit to an eyesight test
MS90	Failure to give information as to identity of driver etc
MW10	Contravention of Special Road Regulations (excluding speed limits)
PC10	Undefined contravention of Pedestrian Crossing Regulations
PC20	Contravention of Pedestrian Crossing Regulations with a moving vehicle
PC30	Contravention of Pedestrian Crossing Regulations with a stationery vehicle
SP10	Exceeding goods vehicle speed limits
SP20	Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)
SP30	Exceeding statutory speed limit on a public road
SP40	Exceeding passenger vehicle speed limit
SP50	Exceeding speed limit on a motorway
SP60	Undefined speed limit offence
TS10	Failing to comply with traffic light signals
TS20	Failing to comply with double white lines
TS30	Failing to comply with 'stop' sign
TS40	Failing to comply with direction of a constable/warden
TS50	Failing to comply with traffic sign (excluding stop signs, traffic lights or double white lines)
TS60	Failing to comply with a school crossing patrol sign
TS70	Undefined failure to comply with a traffic direction sign

PLEASE NOTE:

Any offence of aiding, abetting or procuring the above offences, the offence code will have the **0** replaced by a **2**.

Any offence of causing or permitting the above the offences, the offence code will have the **0** replaced by a **4**.

Inciting any of the above offences, the offence code will have the **0** replaced by a **6**.

If any of the offences in **Category 'B'** involve a licensed Hackney Carriage or private hire vehicle, they will be treated as though they are a **Category 'B'** offence under Annex (ii).

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Agenda Item 6

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

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Agenda Item 7

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Agenda Item 8

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Agenda Item 9

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Agenda Item 10

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Agenda Item 11

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RESULTS OF CONSULTATION WITH PRIVATE HIRE VEHICLE LICENCE HOLDERS

Submitted by: Head of Central Services

Purpose

To inform the Committee of the results of consultation with Private Hire Vehicle Licence Holders.

Recommendations

That the Committee consider the results of the consultation.

1. Background

- 1.1 On Monday 6 August 2012, the Committee resolved that consultation be undertaken with regards to adding a condition to Private Hire Vehicle Licences.
- 1.2 Consultation was undertaken and the holders of Vehicle Licences were written to asking their views on the proposed addition of a condition which stipulates:-

“DOORSIGNS

The holder of a Private Hire Vehicle licence shall ensure that door signs are displayed on their Private Hire Vehicles and that the signs comply with the following:

The sign shall measure at least 590mm x 220mm and shall be adhesive in type and shall exhibit the following:

- (i) The words “PRIVATE HIRE PRE BOOKED JOURNEYS ONLY” in lettering measuring at least 20mm and no more than 30mm.
- (ii) The name of the Operator under whose licence the vehicle is operated, and the first three figures of the telephone number of that Operator in lettering measuring at least 30mm and no more than 70mm high.
- (iii) The final four figures of the telephone number of that Operator in lettering measuring at least 70mm and no more than 110mm high.”

2. Issues

- 2.1 445 consultation letters were sent out; there have been 23 replies. Those responses can be categorised as follows:

- (1) Those wanting no change (15).
- (2) Those who agree with the door signage (5).
- (3) Letters returned with no opinion (3).

The main theme of responses in (1) and (2) was an objection to door signs being adhesive and a preference for magnetic signs.

3. Options

- 3.1 The Committee can resolve to:-

- (a) Add the condition to the Vehicle Licence as originally proposed.
- (b) Amend the condition.
- (c) Not add the condition to the licence.

4. **Proposal**

4.1 The Head of Central Services recommends that in this case it would be appropriate to consider all of the options.

5. **Financial Implications**

None.

6. **Crime and Disorder**

6.1 Reducing the incidence of crime

8. **Decision Required**

8.1 What action do you want to take?

PIGEON CONTROL: NEWCASTLE TOWN CENTRE

Submitted by: David Beardmore, Team Manager Dog & Pest Control

Portfolio: Environment & Recycling

Ward(s) affected: Town Centre

Purpose of the Report

To confirm current measures, and propose further action to control pigeon numbers within the town centre.

Recommendations

- (a) That the authority continues to limit available food for pigeons within the town centre through street cleansing and attempts to change residents' behaviour through education, and where appropriate the issuing of littering fixed penalty notices.**
- (b) That works to proof council buildings should continue, and that traders be encouraged to check their buildings and plant to ensure they are not harbouring birds**
- (c) That through the Town Centre Partnership traders support for lethal control is gauged, and an indication obtained as to whether they would be willing to provide treatment sites, independently commission controls, or financially support lethal controls coordinated by the authority**

Reasons

Control requires long-term support of residents, traders, and sustained cleansing and enforcement by the council. No single element will provide a solution, and unless commitment can be obtained to continue actions for at least 12 months, little impact will be seen.

1. Background

- 1.1 Pigeon numbers within the town centre have steadily risen over the last five years since lethal controls have ceased.
- 1.2 Complaints from both individual residents, and also from businesses and landlords are now increasing.
- 1.3 We are currently attempting to control numbers through: encouraging town centre businesses to correctly maintain and proof their buildings; requesting traders display signs and discourage their customers from intentionally feeding town centre pigeons; and by regular street cleansing, and litter enforcement actions. We will continue these actions but are now seeking Members views on additional controls.

2. Issues

- 2.1 Pigeon control is an emotive issue. Some residents enjoy feeding birds in the town centre, whilst others are intimidated by the birds, or concerned about the levels of fouling which can make pavements slippery and seats unusable.

- 2.2 When raised the topic prompts considerable public discussion, and media interest. Control can prompt action by wildlife campaigners.
- 2.3 A variety of options are available to dissuade birds or reduce pigeon numbers.
- 2.4 Any action attempted is unlikely to have an immediate effect, and several weeks of constant work will be required before there is any noticeable reduction in bird numbers. Controls only have short term effect and so would need to be sustained.

3. Options Considered

Effective pigeon control is likely to require three elements.

3.1 Reduce Food Sources

Pigeons are attracted to our town centre by the availability of food. Birds will feed on fast food dropped inadvertently by shoppers. However there are a growing number of residents who intentionally separate parts of their meal for the birds, and other residents who specifically purchase food items, including bird seed, specifically to throw to the birds.

- 3.1.1 Persons depositing food intentionally can be considered to be littering, and enforcement action is possible, including the issue of fixed penalty notices (S.87 Environmental Protection Act 1990). However as many residents may not associate bird feeding with littering it would be prudent for the authority to heavily promote its intention to issue penalties for bird feeding, and possibly erect signage, to mitigate any possible appeals to penalties.
- 3.1.2 The authority must also continue to ensure that litter bins are emptied frequently, and that the area is swept/litter picked regularly.
- 3.1.3 Traders should also be encouraged to discourage bird feeding. Practical steps could range from displaying signs, to declining to sell where they consider the purchaser intends to feed birds in the town centre.
- 3.1.4 The authority has the option to designate specific feeding areas. This approach enables residents who derive pleasure from feeding birds to continue to do so. Dependent upon demand for this it may be possible to identify a site. However, it must be noted that if a feeding site is close to the town centre it is likely that bird numbers in nearby areas will remain high. Increasing bird numbers in the feeding site will potentially result in damage to planting, and nearby buildings. High pigeon numbers in an area will reduce the number of other native birds in that locality. Any feeding area will inevitably require enhanced cleansing, and possibly rodent control measures.

3.2 Remove Roosting/Nesting/Perching Locations

Our surveys suggest that there are relatively few locations in the town centre where birds nest and roost overnight. Where possible we have already taken action to reduce these. Many buildings in the town centre already have bird proofing (including the Guildhall), and works are ongoing at sites such as The Midway car park to tackle roosting.

- 3.2.1 There may however be additional sites we have not been able to survey, and businesses should be encouraged to check their roof tops, and plant, to ensure that these are not harbouring birds.
- 3.2.2 Proofing is relatively expensive. There are costs associated with maintaining the proofing, and may be additional upkeep costs for buildings where access to carry out repairs may be

more difficult due to netting etc. Whilst the authority has, and will continue to encourage businesses to add proofing measures, in most cases it can not compel them to take action.

- 3.2.3 The authority is currently looking at how it can dissuade birds from perching on street lightings and hanging baskets.
- 3.2.4 Proofing works will only ever have a limited effect. Proofing some buildings is impractical, and there will always remain other structures, including trees, where birds may perch.

3.3 Lethal Controls

- 3.3.1 If bird numbers continue to increase lethal controls may need to be considered. Control measures include shooting and cage trapping.
- 3.3.2 Lethal control requires specialist services, and the majority of authorities used a specialist contractor for such works.
- 3.3.3 The controls possible depend on the level of support from traders, as in most cases access to roof tops will be required.
- 3.3.4 To be effective works need to be sustained. Where cage traps are in use they need to be checked every 24hours.
- 3.3.5 An initial 12 months pilot project for the town centre has been costed at £6,000
- 3.3.6 Traders could also individually or collectively commission such works themselves, independently of the authority.

4. Proposal

- 4.1 The authority proposes to continue its current action to remove litter and discourage littering.
- 4.2 It aims to educate residents of the problems encouraging pigeons causes, and to confirm that it may issue fixed penalty notices for bird feeding in the future.
- 4.3 We will attempt to establish if there is a demand to designate a bird feeding area close to the town.
- 4.4 Through traders groups we will continue to encourage correct maintenance of buildings, and proofing works where appropriate.
- 4.5 We will attempt to identify trader support for lethal controls, establish those willing to provide treatment sites, and the likelihood that they will either commission works independently of the council, or be willing to contribute to the council's costs if it coordinated lethal controls

5. Reasons for Preferred Solution

- 5.1 Control requires long-term support of residents, traders, and sustained cleansing and enforcement by the council.
- 5.2 No single element will provide a solution, and unless commitment can be obtained to continue actions for at least 12 months, little impact will be seen.

4. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

4.1 Pigeon control aligns with the councils stated priority to maintain clean and safe public places.

5. **Legal and Statutory Implications**

5.1 Pigeon control is legally sanctioned under a general licence issued by DEFRA. The authority is not obliged to act.

5.2 It needs to be shown that the works are necessary for public health and public safety, and that controls are not in response to costs (e.g. not to prevent damage to buildings, or specifically reduce street cleansing costs).

5.3 Those engaged in control works would need to demonstrate high levels of health and safety, and appropriate animal welfare standards.

5.4 The authority has no power to compel traders to control pigeons, and any funding requested would be voluntary.

6. **Equality Impact Assessment**

6.1 No issues have been identified

7. **Financial and Resource Implications**

7.1 The estimated cost of pigeon control work within the town centre, delivered by a specialist contractor, is £6,000 per annum. There is currently no budget for undertaking this work.

7.2 In addition the authority will need to field enquiries and complaints from its residents, and liaise with traders.

7.3 Administering the recovery of any voluntary contribution from traders is likely to be complex

7.4 Should a decision be made to utilise its own staff to deliver controls, a commitment of approximately 0.2 of a full time pest control officer is required. With associated costs this represents £5,500. This would provide weekday controls only. Delivering this work in-house would reduce the amount other tasks the service could deliver, with a corresponding reduction in income.

8. **Major Risks**

8.1 There is a risk that controls may not be supported by residents or traders. If traders are unwilling to provide access to suitable control locations no action will be possible.

8.2 There is a reputation risk to the council, and its services if controls are not delivered professionally, and do not represent value for money.

8.3 Controls have a number of associated safety risks, and person engaged delivering the controls may be injured (e.g. fall from height) or assaulted.

9. **Sustainability and Climate Change Implications**

9.1 Any controls delivered would have only a limited, and local effect on pigeon populations. There is no risk to non-target wildlife.

9.2 Whilst controls may require additional journeys to be made to the treatment site, the treatment itself is non-polluting.

10. **Key Decision Information**

10.2 Town centre pigeon control is not considered a key decision.

11. **Earlier Cabinet/Committee Resolutions**

There are no relevant previous resolutions which should influence the matter.

12. **List of Appendices**

None

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ENVIRONMENTAL PROTECTION ACT 1990, SECTION 33, 34, 34(2A) – FLY TIPPING

Submitted by: Head of Environmental Health Services

Portfolio: Environment and Recycling

Ward(s) affected: All

Purpose of the Report

To advise the Committee of action taken in respect of fly tipping offences within the borough and to seek authorisation to institute legal proceedings.

Recommendation

That legal proceedings be instituted in relation to the case mentioned below.

Reasons

A prosecution taken under sections 33 and 34 (2A) Environmental Protection Act 1990 (as amended by The Waste (Household Waste Duty of Care) (England and Wales) Regulations 2005) is in line with the Council Priority Creating a Cleaner Greener and Safer Borough. Creating an environment where the streets and open spaces are clean and the community maintains pride in the borough. The action should deter other persons from fly tipping within the borough.

1. Background

- 1.1 On the afternoon of the 11 October 2012, a complaint was received of a fly tipping incident at Ashfields New Road, Newcastle-under-Lyme. The complainant was contacted and they advised that a number of items were found. Most of the items were addressed to NFS, a company located in Newcastle under Lyme.
- 1.2 On 12 October 2012, an officer visited the location of the fly tipping and noted a large accumulation of flooring, underlay, cardboard boxes, plastic sacks, plastic containers and refuse sacks. On investigation of one of the refuse sacks correspondence was found addressed to NFS.
- 1.3 On 17 October 2012, officers visited NFS and hand delivered an invite to interview and on 22 October 2012 the owner of NFS attended the interview under caution. During the interview the owner stated that he had procedures in place for the correct disposal of his waste, however due to cash flow issues he had recently used a gentleman whose details he had obtained from a newspaper. The company owner did not produce any waste transfer notes, a copy of the gentleman's waste transfer licence or any other documents in relation to the disposal of the waste. Documents in relation to the company he had used for the disposal were not produced. The company owner said that he was fully aware of his responsibilities in relation to his duty of care for commercial waste, but offered no further explanation.

2. Issues

- 2.1 Consideration should be given to bringing a prosecution as contrary to section 33 and 34, there is reason to believe that the owner of NFS deposited controlled waste on the land without a waste management licence authorising such a deposit. He also failed to dispose

of controlled waste otherwise than in accordance with a waste management licence. The company owner also failed in his 'duty of care' to secure the transfer of business and trade waste produced by his company to an authorised person or to a person authorised for transport purposes. Any prosecution would be taken under section 33 or 34 (2A) Environmental Protection Act 1990 (As amended by The Waste (Household Waste Duty of Care) (England and Wales) Regulations 2005).

3. **Policy Considerations**

There are none arising from this report.

4. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

4.1 Creating a cleaner, safer and sustainable Borough.

- Streets and open spaces are clean and the community have pride in the borough and take responsibility for seeing that it is clean and pleasant by reducing waste.
- The community is not put at risk from pollution or environmental hazards.

5. **Legal and Statutory Implications**

5.1 The Environmental Protection Act 1990 places a duty on the Council and provides powers.

6. **Equality Impact Assessment**

There are no differential equality impacts identified within this report.

7. **Financial and Resource Implications**

7.1 The Council would seek to recover costs during any court proceedings.

8. **Major Risks**

There are no major risks with this report.

9. **Human Rights Implications**

Article (6)(i) guarantees an applicant a fair hearing

Article 14 guarantees no discrimination

CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005 - FIXED PENALTY NOTICES

Submitted by: Head of Environmental Health Services

Portfolio: Environment and Recycling

Ward(s) affected: All

Purpose of the Report

To advise the Committee of action taken in respect of Littering offences within the borough and to seek authorisation to institute legal proceedings against the Fixed Penalty Notice holders listed in the attached appendix.

Recommendations

That legal proceedings be instituted in the relation to the cases detailed in the attached appendix.

Reasons

The Government has amended and extended the powers available to local authorities through the Clean Neighbourhoods and Environment Act 2005 (CNEA 2005), to tackle environmental crime. It contains new statutory provisions for Fixed Penalty Notices (Fines), and Litter.

1. Background

- 1.1 Officers of the Council are continually conducting litter patrols through the town centre and Borough of Newcastle-under-Lyme. The aim of the patrols being to identify any person who is throwing, dropping or depositing litter in the street or public area. It is an offence under the Environmental Protection Act 1990 to discard litter (including smoking materials or chewing gum) in this manner, however to avoid a conviction in the courts offenders are given the opportunity to discharge their liability by payment of a fixed penalty.
- 1.2 The individuals below were issued with such a penalty during September and October 2012 but have failed to make any payment to the Council. All the alleged offenders have been written to regarding the outstanding non payments, with little or no response.
- 1.3 In order to conclude these cases in a satisfactory manner authority is sought to institute legal proceedings.

2. Issues

- 2.1 Consistent enforcement is needed to challenge people who choose to ignore the law and the Department for Environment, Food and Rural Affairs (DEFRA) guidance states clearly that "pursuing non-payment of fixed penalty notices is key to a successful penalty system. Authorities need to strive for a high payment rate to reflect this success".

3. Policy Considerations

There are none arising from this report.

4. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

4.1 Creating a cleaner, safer and sustainable Borough.

- Streets and open spaces are clean and the community have pride in the borough and take responsibility for seeing that it is clean and pleasant by reducing waste.
- The community is not put at risk from pollution or environmental hazards.

5. **Legal and Statutory Implications**

5.1 The Environmental Protection Act 1990 and CNEA 2005 place duties on the Council and provide powers.

6. **Equality Impact Assessment**

There are no differential equality impacts identified within this report.

7. **Financial and Resource Implications**

7.1 The Council seek to recover costs during any court proceedings.

8. **Major Risks**

8.1 Non payment

The non-payment of fines needs to be considered seriously. If a non-payment culture were allowed to develop the Council would be in disrepute with the residents and members, undermining confidence in a service which aims to improve the quality of the environment.

9. **Human Rights Implications**

Article 6(i) guarantees an applicant a fair hearing.

Article 14 guarantees no discrimination

APPENDIX

D021947	SD
D021950	MN
D021953	TC
D021954	BD
D021959	DK
D021960	RS
D021961	TF
D021965	CC
D021966	LF
D021967	SW
D021970	FH
D021972	JB
D021974	KB
D021977	DB
D021978	HPP
D021979	UW
D021980	JS
D021981	MID
D021983	JW
D021984	BJC
D021986	CS
D021992	IE
D021995	DJ
D021996	CS
D022000	AZ
D022001	CD
D022003	DC
D022004	CDN
D022005	KMB
D022007	SL
D022011	KM
D022012	JPB
D022014	MJ
D022018	IS
D022020	SM
D022023	JE
D022026	DT
D022027	NM
D022028	AB
D022032	AA
D022033	DN
D022034	CB
D022038	EH
D022039	MC
D022040	MF
D022041	TC
D022047	SR
D022048	JT
D022054	AN
D022059	NB
D022067	PC
D022072	TW

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CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005 - FIXED PENALTY NOTICES

Submitted by: Head of Environmental Health Services

Portfolio: Environment and Recycling

Ward(s) affected: All

Purpose of the Report

To advise the Committee of the action taken in respect of Littering offences within the Borough.

Recommendation

That the report be received.

Reasons

Consistent enforcement is needed to challenge people who choose to ignore the law and the Department for Environment, Food and Rural Affairs (DEFRA) guidance states clearly that pursuing non-payment of fixed penalty notices is key to a successful penalty system. Authorities need to strive for a high payment rate to reflect this success.

1. Background

1.1 During recent patrols conducted through the town centre and borough of Newcastle-under-Lyme a number of individuals were witnessed Littering. The offenders were approached and advised with regard to the appropriate legislation and their details were then recorded by an enforcement officer. It is an offence under the Environmental Protection Act 1990 to discard litter, however to avoid a conviction in the courts offenders are given the opportunity to discharge their liability by payment of a fixed penalty. The following offenders have been issued with Fixed Penalties but failed to pay them, and at Staffordshire Magistrates Court they all received the following fines and costs with a £15 victim surcharge (vs):

Alan Maddocks	£200 FINE	£130 COSTS	£15 VS
Lisa Warren	£200 FINE	£130 COSTS	£15 VS
Daniel Durham	£200 FINE	£130 COSTS	£15 VS
Sherry Newhall	£200 FINE	£130 COSTS	£15 VS
Kerry Louise Simcock	£200 FINE	£130 COSTS	£15 VS
Daniel Harley	£130 FINE	£130 COSTS	£15 VS
Jade Mainwaring	£100 FINE	£130 COSTS	£15 VS
Helena Draf	£100 FINE	£130 COSTS	£15 VS
Victor Odhiambo	£100 FINE	£130 COSTS	£15 VS
Andrew Gater	£100 FINE	£130 COSTS	£15 VS
Ashley James Morris	£100 FINE	£130 COSTS	£15 VS
Sarah Louise Corden	£100 FINE	£130 COSTS	£15 VS
Wayne Tittensor	£80 FINE	£130 COSTS	£15 VS
David Scattergood	£65 FINE	£100 COSTS	£15 VS

2. Issues

2.1 Consistent enforcement is needed to challenge people who choose to ignore the law and

the DEFRA guidance states clearly that pursuing non-payment of fixed penalty notices is key to a successful penalty system. Authorities need to strive for a high payment rate to reflect this success.

3. **Policy Considerations**

There are none arising from this report.

4. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

4.1 Creating a cleaner, safer and sustainable borough.

- Streets and open spaces are clean and the community have pride in the borough and take responsibility for seeing that it is clean and pleasant by reducing waste.
- The community is not put at risk from pollution or environmental hazards.

5. **Legal and Statutory Implications**

5.1 The Environmental Protection Act 1990 and Clean Neighbourhoods and Environment Act 2005 place duties on the Council and provide powers.

6. **Equality Impact Assessment**

There are no differential equality impacts identified within this report.

7. **Financial and Resource Implications**

7.1 The Council seek to recover their costs during any court proceedings.

8. **Major Risks**

8.1 **Non payment**

The non-payment of fines need to be considered seriously. If a non-payment culture were allowed to develop the Council would be in disrepute with the residents and members, undermining confidence in a service which aims to improve the quality of the environment.