

Public Document Pack

Date of meeting **Wednesday, 23rd October, 2013**
Time **10.00 am**
Venue **Committee Room 1, Civic Offices, Merrial Street,
Newcastle-under-Lyme, Staffordshire, ST5 2AG**
Contact **Jan Barron Ext 2224**

Licensing Sub-Committee

AGENDA

PART 1 – OPEN AGENDA

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|----------|--|------------------------|
| 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 Sub-Committee | (Pages 5 - 6) |
| 4 | Application For a Premise Licence - ASDA. Morris Square,
Wolstanton | (Pages 7 - 8) |
| 5 | Background Information - ASDA | (Pages 9 - 14) |
| 6 | Letter of objection | (Pages 15 - 16) |

Members: Councillors

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 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.

Appendix C

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.

Agenda Item 4

Application to/for: Variation of Premise Licence

Submitted by: ASDA Supermarket, Morris Square, Wolstanton, Newcastle under Lyme, Staffordshire ST5 0EN.

Portfolio: Safer Communities

Ward(s) affected: Wolstanton

Purpose of the Report

An application for a variation to a premise licence has been received for ASDA Supermarket, Morris Square, Wolstanton, Newcastle under Lyme, Staffordshire, ST5 0EN. A representation has been received from a resident in the vicinity of the premises on the grounds that to grant the licence would undermine the licence objective relating to the Prevention of Public Nuisance.

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 or amend the application.

1. Details of Application

Applicants: ASDA Stores Limited

Premises: ASDA Supermarket, Morris Square, Wolstanton, Newcastle under Lyme, Staffordshire, ST5 0EN.

Application for: Variation of Premise Licence

Details of Requested Variation:

LIVE MUSIC (Indoors) – Current	LIVE MUSIC (Indoors) – Requested
NONE	NONE
RECORDED MUSIC (Indoors) – Current	RECORDED MUSIC (Indoors) – Requested
NONE	NONE
PROVISIONS OF FACILITIES FOR DANCING (Indoors) – Current	PROVISIONS OF FACILITIES FOR DANCING (Indoors) – Requested
NONE	NONE
SUPPLY OF ALCOHOL (on and off the premises) – Current	SUPPLY OF ALCOHOL (on and off the premises) – Requested
MONDAY TO SATURDAY 8.00 TO 23.00 SUNDAY 10.00 TO 22.30	MONDAY TO SUNDAY 6.00 TO MIDNIGHT
LATE NIGHT REFRESHMENT	LATE NIGHT REFRESHMENT
NONE	MONDAY TO SUNDAY 23.00 TO MIDNIGHT
OPENING HOURS OF THE PREMISE – Current	OPENING HOURS OF THE PREMISE – Requested
MONDAY TO SATURDAY 8.00 TO 23.00 SUNDAY 8.00 TO 22.30	MONDAY TO SUNDAY 6.00 TO MIDNIGHT

2. Consultation

A Representation has been received from a resident in the vicinity of the premises.

3. 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 decision is relevant to the application:

The prevention of public nuisance – (paragraph 4.2)

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

Public safety - (paragraphs 2.8 to 2.17).

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

4. Comments.

In making their decision on the application, the Sub-Committee are 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 reject or amend the application.

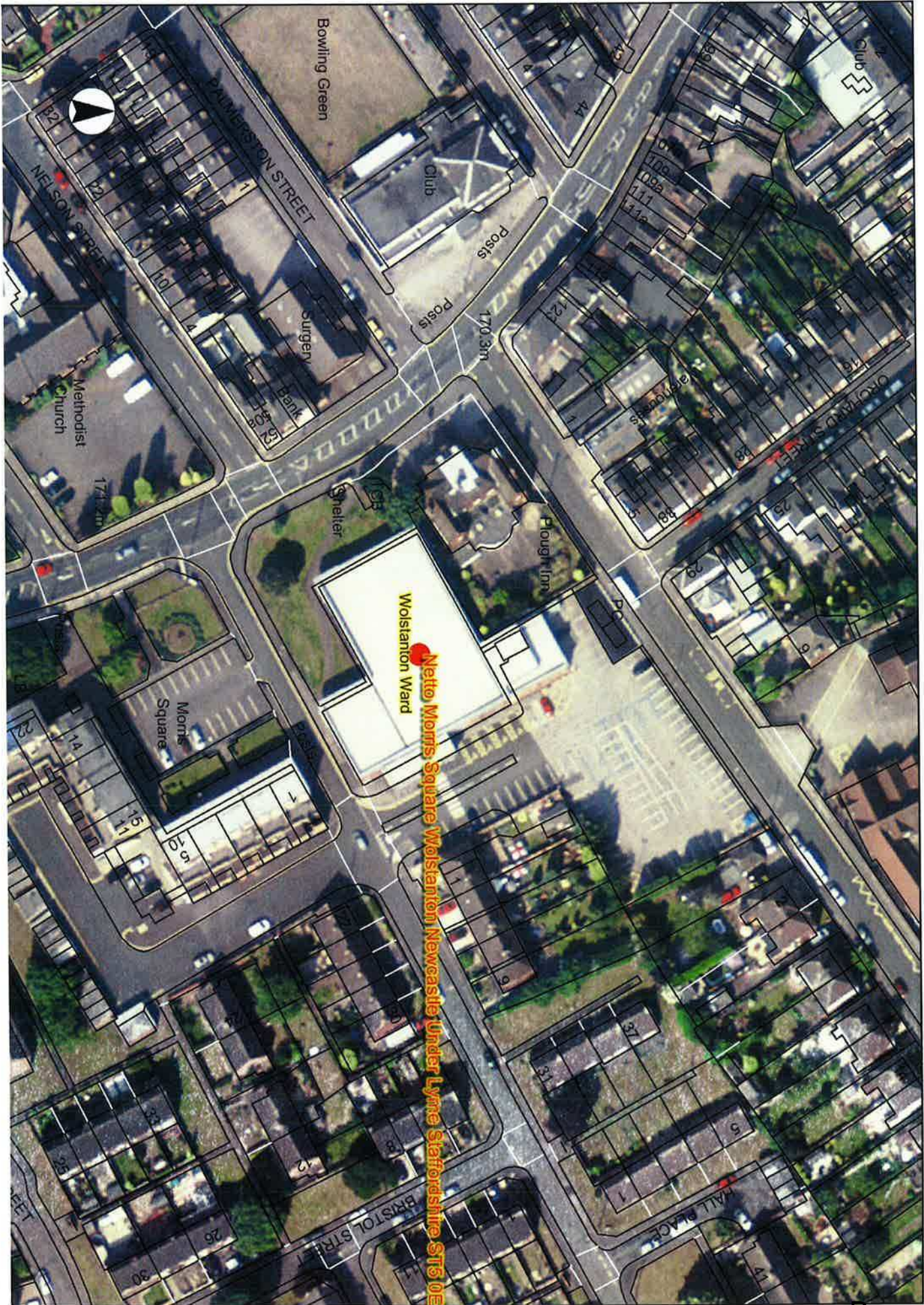
The Sub-Committee are asked to note that they may not reject the application merely because they consider it desirable to do so. It must actually be appropriate in order to promote the licensing objectives



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Agenda Item 6

Andrew Keeling
1 Minton Street
Wolstanton
Newcastle
Staffordshire
ST5 0HF

25/09/13

To The Licensing Department

I am writing with objection to the recent licensing application by Asda, Morris Square, Wolstanton, to extend their alcohol licence.

I am affected as I live directly opposite the store, being their closest neighbour. and since the 2011 planning permission, parking spaces have been moved adjacent to my property, being the prime spaces to park.

The reasons for the objection are in line with the 4 main objectives of the licencing;

1. Although alcohol related crime in this area is minimal, there are issues with crowds gathering around the store and youths congregating. Anti-social behaviour reports are common in this area, and by extending the hours will surely encourage more people to come to the store later in the evening, to buy alcohol, closer to pub closing hours and will encourage further drinking and congregation of youths in the area.
2. This local area, at this time of night is very quiet, BUT, as the darker nights approach, public safety will be at risk, not just for the general public, but also for the staff of the store, as already we have seen many occasion of theft and other criminal activity during the evening when the store is quieter than the day and when staff are at a minimum.
3. By encouraging more people to come to the area later in the evening, anti-social behaviour will increase. Is there really a need for such a late licence in this quite area, when Asda already have a 24 hour store 5 minutes' walk away, with no risk of upsetting the local community at Morris Square.
4. By extending the hours of this store from 8pm to 10pm has already had a detrimental effect on my children as they are awoken many times due to the patrons of the car park. The spaces are less than 3 metres away from my property. People park and leave engines running whilst the partners or friends go into the store and is common to have radios on loud. This causes disturbance to my children and by extending the hours this will make the situation go on later into the evening. We have spoken to environmental health and Asda regarding this, but as it is Asda's patron using the car park, little can be done to reduce it, so I feel very upset that they are willing to extend the hours knowing that their closet neighbour already has issues with the opening hours.

I do hope that the licensing committee see sense in not granting this application and look forward to hearing the conclusion.

Yours Thankfully
Andrew Keeling

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