

**9 LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT - (Pages 71 - 78)
1976**

Hackney Carriage Driver –Mr AQ

10 Open Reports from officers

**11 Clean Neighbourhoods and Environment Act 2005. (Pages 79 - 80)
Enforcement of Dog Control Orders**

12 The Microchipping of Dogs (England) Regulations 2015 (Pages 81 - 84)

13 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, Braithwaite, Dymond, Hailstones, Hailstones, Kearon, Matthews, Robinson (Chair), J Tagg, Welsh, Wemyss (Vice-Chair), Williams and Winfield

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.

FIELD_TITLE

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 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.



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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PUBLIC PROTECTION COMMITTEE

Tuesday, 15th March, 2016

Present:- Councillor Kyle Robinson – in the Chair

Councillors Allport, Dymond, Hailstones, Hailstones, Harper, Kearon, Matthews, J Tagg, Wemyss, Williams and Winfield

Apologies Apologies were received from Councillor(s) Braithwaite and Welsh

1. DECLARATIONS OF INTEREST

There were no declarations of interest stated.

2. MINUTES OF PREVIOUS MEETING

Resolved: That the minutes of the meeting held on 26 January, 2016 be agreed as a correct record.

3. DISCLOSURE OF EXEMPT INFORMATION

Resolved:- That the public be excluded from the meeting during consideration if the following matter because it is likely that there will be disclosure of exempt information as defined in paragraphs 1,2, and 7 in Part 1 of Schedule 12A of the Local Government Act, 1972.

4. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT - 1976

The Committee considered a report regarding an application by Mr AS for the grant of a Private Hire Driver's Licence. The applicant had been convicted of two driving offences.

Mr AS was given the opportunity to address the Committee.

Resolved: That the application for a Private Hire Driver's Licence be refused.

5. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT - 1976

The Committee considered a report regarding a complaint against a Private Hire Driver's Licence held by Mr MI.

Mr MI was not in attendance at the meeting but due to the seriousness of the complaint the Members agreed to make a decision in his absence.

Resolved: That the Private Hire Driver's Licence held by Mr MI be revoked with immediate effect, in the interest of public safety, by virtue of Section 52 Road Safety Act 2006.

6. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT - 1976

The Committee considered a report regarding an application by Mr AA for the grant of a Private Hire Driver's Licence. The applicant had been convicted of two drugs related offences.

Mr AA was given the opportunity to address the Committee.

Resolved: That the application for a Private Hire Driver's Licence be refused.

7. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT - 1976

The Committee considered a report regarding an application by Mr TBBG for the grant of a Hackney Carriage Driver's Licence. The applicant had been convicted of a number of offences which were considered.

Mr TBBG was given the opportunity to address the Committee.

Resolved: That the application for a Hackney Carriage Driver's Licence be refused.

8. CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005 -FIXED PENALTY NOTICES

A report was submitted 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 Appendix.

Resolved: That legal proceedings be instituted in the relation to the cases detailed.

9. ENVIRONMENTAL PROTECTION ACT 1990 -FLY TIPPING OFFENCE

A report was submitted to advise the Committee of the action taken in respect of a Fly Tipping offence within the Borough.

Resolved: That the report be received.

10. CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005 - FIXED PENALTY NOTICES

A report was submitted to advise the Committee of the action taken in respect of littering offences within the Borough.

Resolved: That the report be received.

11. URGENT BUSINESS

There was no Urgent Business.

COUNCILLOR KYLE ROBINSON
Chair

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

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CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005 ENFORCEMENT OF DOG CONTROL ORDERS

Submitted by **Head of Environmental Health Services**

Portfolio **Environment and Recycling**

Ward(s) affected **All**

Purpose of the Report

To seek the Committee's approval to take enforcement action in respect of a breach of a Dog Control Order, where the person refused to provide their name and address (Case D900057)

Recommendations

- a) That a Fixed Penalty Notice should not be retrospectively offered**
- b) That a criminal prosecution be brought against the identified defendant in the Magistrates' Court**
- c) That the offence of failing to provide name and address details to an authorised officer should also be prosecuted as part of the court proceedings**

1. Background

The authority has previously adopted a number of Dog Control Orders, detailing where dogs must be on leads, areas where dogs are excluded, and requiring dog owners to remove fouling if their dog fouls a public place.

If authorised officers witness offences, or the authority receives admissible evidence from a reliable third party, a Fixed Penalty Notice (FPN) is issued to the offender.

Where a person is offered a Fixed Penalty Notice they are obliged to provide their details to the officer.

The recipient has option to pay the penalty, or contest the matter in the Magistrates' Court. The Court may impose a fine of up to £1,000 for the breach of a Dog Control Order and a further fine of up to £1,000 if the offender did not provide their details when requested to do so

The majority of those offered a fixed penalty cooperate fully with the officer, however there are instances where the person can be obstructive, abusive, or make threats to officers.

2. Issues

In respect of case D900057, which relates to dog fouling on a public open space in January 2016, the dog walker refused to provide their details to the authorised officer and became abusive. They were subsequently identified using a vehicle registration check and have attended an interview under caution.

Their conduct meant it was not possible to issue a FPN at the time of the incident.

Officers are now satisfied that they have correctly identified the offender and in accordance with DEFRA guidance considers it inappropriate to retrospectively offer a FPN. Instead it recommends that the matter be passed to the courts. The Committee is therefore asked to approve the recommendation set out above.

3. Policy Considerations

This recommendation is in line with “*Local environmental enforcement – guidance on the use of fixed penalty notices*” DEFRA 2007 and consistent with the Borough Council’s Enforcement Policy 2014-2017

4. Outcomes Linked to Sustainable Community Strategy and Corporate Priorities

Robust enforcement of Dog Control Orders is supported by residents and helps ensure that our public places remain clean and safe and encourages their use.

5. Legal and Statutory Implications

The Clean Neighbourhoods and Environment Act 2005 enabled the creation of Dog Control Orders, creates offences for their breach and for failing to provide information to authorised officers.

6. Equality Impact Assessment

There are no differential equality impacts identified within this report.

7. Financial and Resource Implications

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

8. Major Risks

Not pursuing enforcement may undermine confidence in the service and increase non-compliance with Dog Control Orders.

9. Background Information

<https://www.newcastle-staffs.gov.uk/all-services/environment/dog-wardens/dog-control-order-penalties>

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

EXECUTIVE MANAGEMENT TEAM'S REPORT TO THE PUBLIC PROTECTION COMMITTEE

Date 13TH April 2016

1. REPORT TITLE

The Microchipping of Dogs (England) Regulations 2015

Submitted by: Head of Environmental Services, Nesta Barker

Portfolio: Environment & Recycling

Ward(s) affected: All

Purpose of the Report

To advise members of the commencement of The Microchipping of Dogs (England) Regulations 2015

Recommendations

That members receive the report

Reasons

The new regulations provide new powers to appointed persons, but do not significantly change the way the authority maintain dog related controls.

1. Background

The Microchipping of Dogs (England) Regulations 2015 required that all dogs, over 8 weeks old, be microchipped, and up to date details of their keeper registered by 6th April 2016. From 28th April 2016, 'Authorised Persons' will be able to take action where these regulations are breached.

2. Issues

These regulations are made by the Secretary of State under the Animal Welfare Act 2006.

Section 11(2) of the The Microchipping of Dogs (England) Regulations 2015 states "*A local authority in whose area a dog is kept may authorise in writing any person ("an authorised person") to act for the purpose of enforcing these Regulations in its area.*"

As the provisions of the Animal Welfare Act are already delegated, legal advice confirms that amendment to the council's existing scheme of delegation is not required for the enforcement of the Regulations.

3. Proposal

Public Protection Committee is therefore asked to note:

- That the provisions of the regulations will be enforced by Environmental Health Services staff and principally the council's Dog Wardens; and

- That the existing enforcement protocol will apply, with dog owners being encouraged to comply in the first instance, but enforcement action being taken, subject to a public interest assessment, if owners fails to chip their dog, or maintain appropriate details on the associated microchipping database.

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

Ensuring that dog owners act responsibly aligns with the council's priority to maintain a clean and safe borough

5. **Legal and Statutory Implications**

The Regulations provide powers to officers to confirm that dogs have been microchipped and that owner's details are up-to-date. Authorised Persons have the power to seize unchipped dogs, arrange for a chip to be implanted and recover the costs incurred. There is the option to prosecute owners who fail to comply with the regulations (e.g. refuse to chip their dog, fail to update details, obstruct officers etc.).

The authority is not obliged to authorise persons and could instead opt not to enforce these controls.

DEFRA has as yet not published guidance on enforcement of these provisions.

6. **Equality Impact Assessment**

Enabling appropriate officers to use these powers poses no equality issues

7. **Financial and Resource Implications**

There are no additional costs associated with enabling officers to use the additional powers afforded them by these new regulations as part of their current duties.

Costs would be incurred for any enforcement action escalated to the courts. Any such action would be subject to existing case review procedures, including a public interest test assessment. The current scheme of delegation requires all action of this type to receive prior member approval. Nothing in this report is intended to change this.

8.. **Major Risks**

These is an expectation that widely publicised changes requiring dog owners to microchip their pets will be supported by district councils and appropriately enforced. There is considerable risk of reputational damage, and likelihood that other dog related controls would lose public confidence if the authority fails to appropriately use these new provisions.

9. **Sustainability and Climate Change Implications**

No issues are raised.

10. **Key Decision Information**

This is not considered a key decision

11. **Earlier Cabinet/Committee Resolutions**

No relevant resolutions apply

12. **Background Papers**

The regulations are available at:

http://www.legislation.gov.uk/uksi/2015/108/pdfs/uksi_20150108_en.pdf

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