

Public Document Pack

Date of meeting Tuesday, 11th December, 2018
Time 7.00 pm
Venue Astley Room - Castle House
Contact Jayne Briscoe 742250



**NEWCASTLE
UNDER LYME**
BOROUGH COUNCIL

Castle House
Barracks Road
Newcastle-under-Lyme
Staffordshire
ST5 1BL

Licensing & Public Protection Committee

AGENDA

PART 1 – OPEN AGENDA

1 PART 1 - LICENSING

2 APOLOGIES

3 DECLARATIONS OF INTEREST IN RELATION TO LICENSING MATTERS

To receive declarations of interest from Members on items contained within the agenda

4 MINUTES OF PREVIOUS MEETING (Pages 3 - 6)

5 MINUTES OF LICENSING SUB COMMITTEE MEETINGS (Pages 7 - 10)

To consider the minutes of the Licensing Sub-Committees which have met since the previous Licensing and Public Protection Committee.

6 FIVE MINUTES BREAK

7 PART 2 - PUBLIC PROTECTION (OPEN)

8 DECLARATIONS OF INTEREST IN RELATION TO PUBLIC PROTECTION MATTERS

To receive declarations of interest from Members on items contained within the agenda

9 TAXI POLICY CONSULTATION (Pages 11 - 12)

10 THE ANIMAL WELFARE (LICENSING OF ACTIVITIES INVOLVING ANIMALS) (ENGLAND) REGULATIONS 2018 (Pages 13 - 22)

11 EXTENDED USE OF FIXED PENALTY NOTICES (Pages 23 - 28)

12 PUBLIC PROTECTION AND PUBLIC PROTECTION SUB COMMITTEE ARRANGEMENTS (Pages 29 - 32)

13 PART 3 - PUBLIC PROTECTION (CLOSED)

14 DISCLOSURE OF EXEMPT INFORMATION

To resolve that the public be excluded from the meeting during consideration of the attached report, 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.

15 MINUTES OF PUBLIC PROTECTION SUB-COMMITTEE MEETINGS (Pages 33 - 42)

To consider the minutes of the Public Protection Sub-Committees which have met since the previous Licensing and Public Protection Committee.

16 URGENT BUSINESS

To consider any business which is urgent within the meaning of Section 100B (4) of the Local Government Act 1972

Members: Councillors J. Cooper, S. Dymond, T. Johnson, T. Kearon, M. Olszewski (Chair), A. Parker, K. Robinson, S. Sweeney, J Tagg, J. Walklate, J Waring, S White (Vice-Chair), G Williams, J Williams and R. Wright

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.

NOTE: THERE ARE NO FIRE DRILLS PLANNED FOR THIS EVENING SO IF THE FIRE ALARM DOES SOUND, PLEASE LEAVE THE BUILDING IMMEDIATELY THROUGH THE FIRE EXIT DOORS.

ON EXITING THE BUILDING, PLEASE ASSEMBLE AT THE FRONT OF THE BUILDING BY THE STATUE OF QUEEN VICTORIA. DO NOT RE-ENTER THE BUILDING UNTIL ADVISED TO DO SO.

LICENSING & PUBLIC PROTECTION COMMITTEE

Tuesday, 23rd October, 2018
Time of Commencement: 7.00 pm

Present:- Councillor Mark Olszewski – in the Chair

Councillors:

Officers Nesta Barker - Head of Environmental Health Services, Geoff Durham - Mayor's Secretary / Member Support Officer and Anne-Marie Pollard - Solicitor

1. **APOLOGIES**

Apologies were received from Councillors Sweeney, J Tagg, G Williams and J Williams.

2. **DECLARATIONS OF INTEREST IN RELATION TO LICENSING MATTERS**

There were no declarations of interest stated.

3. **MINUTES OF A PREVIOUS MEETING**

Resolved: That the Minutes of the meeting held on 18 September, 2018 be agreed as a correct record.

4. **GAMBLING ACT 2005 - REVIEW OF STATEMENT OF LICENSING PRINCIPLES (GAMBLING POLICY)**

Consideration was given to a report outlining representations received in relation to the consultation on the draft Gambling Policy.

Paragraph 19.3 in the draft had now been removed and dates had been added in paragraph 1.4. Paragraph 1.6 had the date included for the Full Council Meeting.

The policy needed to be published before 3 January, 2019.

Resolved: (i) That the responses to the consultation exercise be received.

 (ii) That the updated Policy be presented for approval to Full Council at its meeting on 21 November, 2018.

5. **FEEES TO BE CHARGED FOR THE LICENSING OF SCRAP METAL DEALERS, GAMBLING, SEXUAL ENTERTAINMENT VENUE LICENSING 2019-20**

Consideration was given to a report outlining fees to be charged in relation to licensing of Scrap Metal Dealers, Gambling and Sexual Entertainment Venues for 2019/20.

Members' attention was drawn to paragraph 2.3 of the report including a change that needed to be made under 'Licences' (2019/20 Fees):

For a Scrap Metal Dealer Site Licence the fee should be £270 not £265 and the Scrap Metal Dealer Collectors Licence the fee should be £215 not £210.

Resolved: That the fees to be charged for the licensing of Scrap Metal Dealers, Gambling and Sexual Entertainment Venues for 2019/20 be agreed.

6. DECLARATIONS OF INTEREST IN RELATION TO PUBLIC PROTECTION MATTERS

There were no Declarations of Interest stated.

7. PRIVATE HIRE & HACKNEY CARRIAGE FEES & CHARGES 2019/2020

Consideration was given to a report outlining the proposed taxi and private hire fees prior to consultation.

Members' attention was drawn to paragraph 2.1 of the report which showed the proposed fees for 2019/20.

Members were advised that a notice would be placed in the Sentinel in respect of the consultation and the taxi Association would be notified.

Resolved:

- (i) That the proposed fees be noted by this Committee.
- (ii) That the proposed fees be sent out for consultation.
- (iii) That, following consultation, a further report be brought to this committee.

8. 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 contained within Part 1 of Schedule 12A of the Local Government Act, 1972

9. MINUTES OF PUBLIC PROTECTION SUB-COMMITTEE MEETINGS

Resolved: That the Minutes of the meetings held on 18 September, 2 October and 16 October, 2018 be agreed as a correct record.

10. OUTCOME OF PROSECUTION PROCEEDINGS FOR BREACHES OF A NOISE NUISANCE ABATEMENT NOTICE ISSUED UNDER THE ENVIRONMENTAL PROTECTION ACT 1990

Consideration was given to a report informing Members of the outcome of prosecution proceedings for breach of a noise nuisance abatement notice.

Resolved: That the report be noted.

11. **URGENT BUSINESS**

There was no urgent Business.

COUNCILLOR MARK OLSZEWSKI
Chair

Meeting concluded at 7.21 pm

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LICENSING ACT 2003

DECISION RELATING TO AN APPLICATION FOR A PREMISES LICENCE: MCDONALDS, DIMSDALE PARADE WEST, NEWCASTLE-UNDER-LYME, ST5 8HS

The Licensing Sub-Committee have taken into account the Licensing Act 2003, the guidance issued under Section 182 of the Act, the Councils Statement of Licensing Policy and also the fact that representations to the application have been received from other persons on the basis that to grant the application would undermine the objectives relating to the prevention of crime and disorder and the prevention of public nuisance.

The Licensing Sub-Committee have considered the licensing objectives in the light of what has been said and have listened to the arguments and are persuaded that it would not offend the licensing objectives to grant the application.

The Licensing Sub-Committee carefully considered the report and heard the submissions from local residents and then the applicant's representative.

The Environmental Health team had made written representations on the grounds of 'prevention of public nuisance' and 'the prevention of crime and disorder'. Agreements had been reached with proposed conditions and therefore their objection had been withdrawn. They attended the hearing.

The Staffordshire Police had agreed proposed conditions with the applicant before the meeting and their application was withdrawn. They did not attend the hearing.

The legal advisor reminded all parties that the licence was only being applied for between 23:00 hours and 05:00 hours and that events outside these times could not be considered.

Mrs Gibbons had a prepared statement to read out that was distributed to members with the consent of the applicant. The representations focused on public nuisance and crime and disorder.

She expressed concerns in relation to the bollards blocking off the bottom car park, she described them as ineffective as they were too wide and vehicles could pass through. Also there was a particular issue with her premises next door as the loading bay area was being used for parking next to her house causing noise as staff left the premises late at night. There was also a problem with the rear doors which were heavy and banged when staff went out to the rubbish and recycling as well as going to the smoking areas.

In response to questioning it was established the litter and recycling was not done during the licensable hours and the problems were ones of a private nuisance relating to the Gibbons neighbouring property rather than a public nuisance.

The Sub Committee deliberated and considered that the issues raised by the objectors could be met by the imposing of the conditions agreed with the responsible authorities.

They considered a lot of the representations were outside of their remit as they were planning issues or private nuisance. The committee also felt that the concerns of anti-social behaviour that

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was currently an issue would not occur or could be dealt with by the premises being open. There was a condition that had been agreed with environmental health that would address the issues of the bollards by using "suitably lockable bollards "

The committee resolved to grant the licence as per the application and with the agreed conditions, as detailed below, to be included within the licence.

Agreed with Staffordshire Police:

1. CCTV must be installed and cover all internal and external areas. The CCTV unit shall be positioned in a secure part of the licensed premise and not within any private area of the location. Access to the system should be allowed immediately to the Police, Trading Standards or Local Authority Officers in accordance with the Data Protection Act where it is necessary to do so for the prevention of crime and disorder, prosecution or apprehension of offenders or where disclosure is required by law.
2. All images must be kept for a 28 day period and to be produced to the Police, Trading Standards or Local Authority Officers in relation to the investigation of crime and / or disorder issues and suspected licence breaches, upon request or within 24 hours of such request where it is necessary to do so for the prevention of crime and disorder, prosecution or apprehension of offenders or where disclosure is required by law.
3. The CCTV system must be maintained so as to be fully operational and recording 24 hours every day.
4. The CCTV system clock must be set correctly and maintained (taking account of GMT and BST).
5. There will be notices displayed throughout the premises stating that CCTV is in operation.
6. There must be a competent member of staff available at all times who is trained and capable of operating the CCTV system and also downloading any footage required by the Police, Trading Standards or Local Authority Officers.
7. The Premises Licence Holder must ensure that all licensable activities at the premises, after 00:00 hours until 05:00 hours on permitted days, shall be conducted via the drive through service and that no customers are allowed into the restaurant.
8. The Premises will be an active member in the Business Crime Initiative. The Premises Licence Holder and the Designated Premises Supervisor or another nominee will attend all meetings relevant to the premises as organised by the initiative and will actively participate in the partnership scheme and fully adhere to all the rules and regulations of the scheme.
9. No open containers of alcohol will be permitted to be brought into the premises, no alcohol will be permitted to be consumed on the premises.

Agreed with Environmental Health:

1. Litter bins shall be provided externally to the premises and inside the restaurant dining area for customers to dispose of litter.
2. The premises shall operate daily litter patrols to ensure that litter within the premises, external areas and the vicinity of the area, is cleared.

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3. Signage shall be displayed at the entrance and exit of the Drive-Thru Lane as follows
“please enter and leave the premises in a quiet and orderly fashion”.
4. Signage shall be displayed at the exit of the restaurant area asking customers to “please enter and leave the premises in a quiet and orderly fashion”.
5. Access to the lower car park shall be restricted between 00:00 and 05:00 hours by using suitable lockable bollards in line with the planning condition.

22nd November 2018

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<u>HEADING</u>	Taxi Policy Consultation
<u>Submitted by:</u>	Head of Environmental Health Services & Licensing Administration Team Manager.
<u>Portfolio:</u>	Finance & Resources
<u>Ward(s) affected:</u>	All

Purpose of the Report

To update members on the consultation process for the Council's proposed Taxi Licensing Policy and to request an extension to the consultation period.

Recommendations

That members approve the extension of the consultation period until 14th February 2019.

Reasons

The current Council Taxi Licensing Policy was introduced on 1st May 2015 and is due for review. Members have reviewed the policy and approved a 12 week public consultation. Some members of the trade have requested an extension to the consultation period.

1. Background

- 1.1. On 18th September 2018 the Committee reviewed the draft Taxi Policy 2019-21 and approved that a 12 week consultation was undertaken.
- 1.2. The consultation closes on 21st December 2018.
- 1.3. Following the consultation it was proposed to bring a further report to Public Protection Committee on 22nd January 2019 and subject to approval for the policy to be reported to your February meeting.

2. Issues

- 2.1. A number of representations have been received from the Hackney Carriage Association and Private Hire Operators within Newcastle to extend the public consultation period for this policy.
- 2.2. To date, one meeting has been held with the trade whereby a substantial representation was provided. Officers need to review this and meet with the trade to respond to their representations.
- 2.3. The trade have suggested that their availability for meeting at this time of year is limited.

3. Options Considered

- 3.1 There are two options, which members could consider these are:
 - 3.1.1 That the current proposed timetable can be followed with the consultation period closing on 21st December 2018.

3.1.2 That the consultation period is extended to 19 weeks, closing on Friday 14th February 2019. Followed by a report being presented to Licensing & Public Protection Committee on 19th March 2019.

3.2 Your officer recommendation is that the consultation period is extended.

4. Recommendation

4.1 That members approve the extension of the consultation period until 14th February 2019.

5. Outcomes Linked to Sustainable Community Strategy and Corporate Priorities

5.1 In line with the Council's objectives –

- Promoting a cleaner, safer and sustainable Borough
- Promoting a Borough of Opportunity

6. Legal and Statutory Implications

6.1. There are no statutory requirements on the Council to have a Taxi Licensing Policy, however once in place it can be used as the basis of administrative decisions that we are required to take under the relevant legislation.

7. Financial and Resource Implications

7.1 The function is set on a cost recovery basis, with the cost of the licenses set to recover the Council's costs.

8. Earlier Cabinet/Committee Resolutions

8.1. Public Protection Committee – 20th April 2015.

8.2. Licensing & Public Protection Committee – 18th September 2018.

HEADING **The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018**

Submitted by: Head of Environmental Health

Portfolio: Environment & Recycling

Wards Affected: All

Purpose of the Report

To advise Members of recent changes as a result of The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 which came into force on 1st October 2018.

Recommendations

That Public Protection Committee notes the impact that these new provisions will have on business/residents within the borough and:

- **Supports the proposed full cost recovery fees and charges for 19/20 as detailed**
- **Appoints Environmental Services Team Manager and Dog and Enforcement Officers (x2) as suitably qualified Inspectors and enforce provisions**
- **Agrees the policies in respect of reviews, appeals, re-inspection and refunds detailed in Appendix One**

Reasons

To comply with duties placed on the Council by the Regulations and to apply the provisions as directed to ensure that animal activities are correctly licensed and a national standard enforced.

1. Background

1.1. On 1st October 2018 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 came into force repealing and revoking a range of animal licensing controls, some of which had been in force for more than fifty years.

1.2. The impact assessment to the regulations identified: *“The updated legislation and guidance should result in a clearer, simpler and more consistent licensing system. Licensing will no longer be restricted to the calendar year, allowing for a more evenly distributed administrative burden for local authorities. Animal welfare conditions should improve as a result of bringing licensing standards in line with the Animal Welfare Act 2006.”*

1.3. The new regulations identify five ‘Animal Activities’ which require licensing, if they meet specific criteria detailed in the regulations and the guidance which accompanies them. The activities are:

- Selling animals as pets
- Providing or arranging for the provision of boarding for cats or dogs, which includes: Boarding Cats; Boarding Dogs in Kennels; Home Boarding Dogs; and Providing Day Care for Dogs
- Hiring out horses
- Breeding dogs
- Keeping or training animals for exhibition.

1.4. Providing Day Care for Dogs (dog crèches) falls within the licencing regime for the first time, whilst keeping or training animals for exhibition was previously a County Council function. The controls recognise that practices have changes in recent years and now place licencing requirements on the ‘arranger’ of dog boarding, as well as the ‘host’

families which dogs are placed with. They also recognise that not all animal businesses are premises based.

- 1.5. The regulations suggest that anyone who receives more than £1,000 in any year from animal activities is likely to require a licence. The guidance also suggest which businesses are 'in scope' (ie will be subject to the licencing regime) and those activities which are 'out of scope'. This information is reproduced on the council's website to assist those considering stating an business involving animals to see if they need to apply for a licence. See: <https://www.newcastle-staffs.gov.uk/all-services/environment/dog-wardens/animal-welfare-and-licensing>
- 1.6. New definitions are likely to require many more dog breeders to have a licence and to be bound by its conditions.
- 1.7. New national guidance and standards, now replaces conditions previously adopted by Members. The council no longer has the scope to add conditions – for example to limit the maximum number of dog which can be home boarded (a maximum of three was previously applied).
- 1.8. The standards now set procedures which local authorities must follow to process applications. For the first time there is a competency standard for those involved in animal activity licensing.
- 1.9. Inspectors must determine if a premises meet the 'minimum standard' set by the regulations, or a voluntary 'higher standard' as detailed in the guidance. Existing businesses, who do not have all the records and procedures required by the Regulations, can still be licensed if they have 'minor failings', providing this does not have unacceptable implications for animal welfare.

2. Issues

Impact of the new regulations on businesses

- 2.1. Within Newcastle there are approximately 50 businesses which require an animal activities licence. The majority of these are small family businesses, often operated from the family home. Officers have dealt with the majority of these previously under the former licencing regime.
- 2.2. Although officers have shared information as it has been published, for many businesses the new regulations will be a step change. They place more emphasis on the qualifications of proprietors, policies, procedures and documentation. There is an expectation that detailed records will be kept.
- 2.3. The new inspection process is intended to be a compliance audit. Welfare Standards and Risk combine to produce a grading of between one and five 'stars'. Higher graded businesses receive longer duration licences, and accordingly the licence will be renewed and inspected less often.
- 2.4. Businesses are required to display their star rating so that potential clients can judge their standards. They are also obliged to provide their licence details on any web site where they promote their business. New rules apply where animals are advertised for sale.
- 2.5. Higher graded business are expected to gain from the new regime with potentially increased trade. Businesses with lower grades may lose custom and may struggle to finance refurbishment and may choose to stop operating.

- 2.6. Understandably businesses are finding the lengthy guidance confusing and seeking further explanation and advice. As this is now a national regime, and the only support material provided is the official guidance, it is frequently not possible to offer interpretation.
- 2.7. Guidance (now in its second version) is frequently unclear and contradictory resulting in confusion and frustration. We have ensured that all associated guidance and support material is published on the council's website.

Consequences of changes for the council

- 2.8. The new inspection regime requires considerably more resources than its predecessor.
- The application process is more complex, with applicants needing to provide more detail.
 - Gov.uk application / payment services have been withdrawn.
 - Neither the DEFRA or gov.uk websites have currently published the associated guidance.
- 2.9. The government acknowledges *"There will be one-off familiarisation costs to both businesses and local authorities from the updated regulation."* ...and that... *"Local authorities may need to deal with an additional workload if many more businesses are brought into scope but are unlikely to acquire additional resource so will need to meet this demand by re-prioritising existing activities."*¹
- 2.10. Each inspection typically now requires 2-3 hours on site, plus a further hour of report writing, this is a significant increase in officer time requirements.
- 2.11. A number of the inspection ratings issued are likely to be contested, and some licencing decisions are likely to be appealed. The regulations set a process where a licence holder wishes to challenge the score given, seeks a re-grading inspection after they have made changes, or appeals following a licence refusal or suspension. The authority can charge for re-inspections.
- 2.12. Although the present focus of officers is on ensuring that current licence holders are advised of the changes which affect their businesses and are able to have their licences renewed, from January the focus will change to identifying those who now fall within the scope of licencing and encouraging them to apply. Subsequently action may be required where those who are subject to licencing controls have failed to progress a licence application.
- 2.13. Longer duration licences for higher standard businesses should reduce the total number of inspections required during 2019/20 for existing businesses and enable a focus on those newly licenced and higher risk operations.
- 2.14. Regulation 4 (2) (a) requires that the authority appoints suitably qualified inspectors to inspect any premises on which a licensable activity is carried on.
- 2.15. The regulations now require that inspectors hold a Level 3 certificate. Associated staff training cost have therefore been projected to be approximately £4,000. Officers must be trained before October 2021. Training of three staff will be required. Attendance may impact on service delivery.

¹ Source: Regulations Impact Assessment: http://www.legislation.gov.uk/ukia/2018/71/pdfs/ukia_20180071_en.pdf

- 2.16. To comply with DEFRA’s procedural guidance the council is obliged to publish its policy in respect of: Resolving Disputed Scores; Licence Refusal and Suspensions; undertaking Re-inspections for Re-rating purposes; Fees & Charges and Refunds. Proposed policies attached as Appendix 1.
- 2.17. The increase in resources needed to process applications, inspect premises, and monitor compliance has more than doubled the amount of officer time required. Guidance confirms that authorities should set fees which recover the “reasonable anticipated costs”, but that do not generate a surplus. The Local Government Association guidance on locally set fees has been considered² as has the council’s Charging Policy³
- 2.18. Based on officer time, training, travel, production or reports and licences the following costs have been calculated. Fees for 2019/20 are therefore:

	First Application Grant	Renewal	Grading Review (No visit)	Variation / Re-inspection	Annual Horse Check
Selling Pets	£295	£260	£55	£80	
Animal Boarding	£295	£260	£55	£80	
Hiring Horses	£525 (inc Vet fee)	£460 (inc Annual Horse Check)	£55	£80	£260
Breeding Dogs	£475 (inc Vet fee)	£410 (inc vet fee)	£55	£80	
Training/ Exhibiting Animals	£160	£160		£80	

- 2.19. Where a new application is received officers will seek ‘Pre-Application Advice’ from the council’s Planning & Development team to establish whether planning permission, or building regulation approval may be required by the licence applicant. This is to ensure that any potential planning issues (e.g. need for change of use approval) are identified and can be resolved before an animal activities licence is granted. This avoids potential misunderstanding where an applicant may not appreciate that both planning and animal licensing consent may be required.
- 2.20. Consequential amendments are required to the Council’s scheme of delegation to reflect legislative repeals. Officer’s powers now originate from the Animal Welfare Act 2006. Members have previously appointed and authorised officers to enforce provisions under this Act. The Council’s scheme will be updated in due course through the usual mechanism.

3. **Recommendation**

- 3.1. It is recommended that Public Protection Committee notes the impact that these new provisions will have on business/residents within the borough and:
- Supports the proposed full cost recovery fees and charges for 19/20 as detailed
 - Appoints Environmental Services Team Manager and Dog and Enforcement Officers (x2) as suitably qualified Inspectors and enforce provisions
 - Agrees the policies in respect of reviews, appeals, re-inspection and refunds detailed in Appendix One

² <https://www.local.gov.uk/open-business-lge-guidance-locally-set-licence-fees>

³ <https://www.newcastle-staffs.gov.uk/all-services/your-council/policies-and-strategies-z/charging-policy>

4. Outcomes Linked to Sustainable Community Strategy and Corporate Priorities

4.1. This links to the following corporate priorities:

- Local services that work for local people
- A healthy, active and safe borough.

4.2. Businesses falling within the scope of Animal Activity licencing provide livelihoods for approximately 75 residents. Others provide animal care for their own pleasure. Supporting and promoting such businesses aligns with the council's priority to support local businesses.

4.3. Having access to reliable high quality animal care is important to many of our residents, enabling families to spend time away from home, confident that their pet is being looked after.

5. Legal and Statutory Implications

5.1. The authority is obliged to ensure that the new regulations are correctly implemented and that animal activities falling within the scope of the regulations are correctly licenced.

5.2. The authority must comply with statutory guidance and officers' actions must be consistent and fair. Decision making should be transparent.

6. Equality Impact Assessment

6.1. No adverse impact is anticipated.

7. Financial and Resource Implications

7.1. If adopted the proposed fee structure should make the licencing of animal activities cost neutral. Regulations prevent fees being set to generate a surplus.

8. Major Risks

8.1. No major risks have been identified.

9. Sustainability and Climate Change Implications

9.1. N/A

10. Key Decision Information

10.1. Actions required to implement The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018, whilst impacting on more than 2 wards, are not considered Key Decisions as defined within the council's constitution.

11. Earlier Cabinet/Committee Resolutions

11.1. N/A

12. Background Papers

- Regulations: <http://www.legislation.gov.uk/uksi/2018/486/contents/made>
- Procedural Guidance for local authorities: https://www.newcastle-staffs.gov.uk/sites/default/files/IMCE/Environment/DogWarden/Guidance_Procedure.pdf
- Supporting Information for residents and businesses: <https://www.newcastle-staffs.gov.uk/all-services/environment/dog-wardens/animal-welfare-and-licensing>

Appendix One

Administration, Policies & Procedures: Animal Activities Licensing

Source: <https://www.newcastle-staffs.gov.uk/all-services/environment/dog-wardens/animal-activities-policies-procedures>

Policies and Procedures

The Borough Council is required to follow the relevant Regulations and Statutory Guidance when considering applications for Animal Activities Licences and inspecting premises

If you are unhappy with the officers' report or comments you should first contact the officer. If problems remain unresolved you have the following options:

Appeals

1. Disputed Scores and Licence Reports – Grading Review Request

If you wish to dispute the star rating given as not reflecting the animal welfare standards and risk level of your business at the time of the inspection you should first contact the officer to discuss this matter soon after receiving your rating. We will aim to respond within seven days of your request. A different process applies if changes have been made since the inspection occurred.

If you are not satisfied with the officer's explanation, you have the option to formally appeal. You must make your appeal in writing and submit it within 21 days of your grading being issued.

This can be by letter, addressed to Environmental Health, Newcastle-under-Lyme Borough Council, Castle House, Barracks Road, Newcastle, Staffordshire ST5 1BL or by email to environmental_health@newcastle-staffs.gov.uk. You can withdraw your appeal afterwards if you wish.

An appeal will be considered by the head of the department that issued the licence or another senior officer who has not been directly involved in the inspection on which the grade is based.

The council must consider the appeal and provide a decision to the business within 21 days of the written appeal request being received.

We will consider the appeal by reviewing the paperwork associated with the inspection. This will include the application form originally submitted and the inspector notes from the visit. The past record for the business will also be considered including previous inspections and any complaints in respect of animal welfare which have been investigated. In some circumstances a further visit may be required.

The costs of any additional inspections related to the appeal will be borne by the applicant unless it results in a higher rating being awarded. This will depend on the nature of the dispute and whether a decision can or cannot be made on the basis of the paperwork.

If you then disagree with the outcome of the appeal, you can challenge our decision through judicial review, and you also can contact the Local Government Ombudsman if you consider that we have not properly followed the regulations and any statutory guidance.

2. Licence Refusals / Suspensions

If an officer advises that a licence will be refused or will be suspended they should provide details, in writing, with the reasons why. Generally, the reason to refuse will be because the officer:

- (a) Thinks the applicant is not capable of meeting their licence conditions
- (b) Thinks that granting a licence might negatively affect the welfare, health or safety of the animals involved in the activity
- (c) Considers the accommodation, staffing or management are inadequate for the animals' well-being or for the activity or establishment to be run properly. The relevant guidance documents for the activity will explain in detail the requirements and conditions that must be met so you should have regard to these documents
- (d) Believes the applicant has been disqualified from holding a licence as per Schedule 8 of the Regulations.

The Licence Holder / Applicant may appeal to a First-tier Tribunal if they do not agree with the decision made by us. This must be done within 28 days of the decision.

The relevant forms are here:

- Form T98: Notice of appeal (General Regulatory Chamber (GRC))
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/741602/t98-eng.doc
- Guide to completing the notice of appeal (General Regulatory Chamber (GRC))
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/690455/t97-eng.pdf

3. Re-inspection visit for re-rating purposes

If you have made changes to your business since the licence inspection, have been graded 1-4 stars, and have made improvements you can request a re-inspection to re-assess your star rating. A re-inspection for re-rating purposes could lead to a lower rating being awarded rather than an improved grade.

We should carry out the re-inspection visit within three months of receipt of the request (and payment where required). There is no limit to the number of re-inspections that can be requested, however a fee may be charged for each.

The request should be made in writing. This can be by letter, addressed to Environmental Health, Newcastle-under-Lyme Borough Council, Castle House, Barracks Road, Newcastle, Staffordshire ST5 1BL or by email to environmental_health@newcastle-staffs.gov.uk. You should outline the case for a re-inspection, that is, indicate the actions you have taken to improve the level of compliance or welfare since the inspection and, where appropriate, should include supporting evidence such as photographs or documents. Explain what has changed and how this changes risk or welfare standards.

The council can refuse to undertake a re-inspection if insufficient evidence has been provided that risk or welfare standards have changed. If this happens the council will explain the priority actions that must be taken in order to improve the rating and indicate what evidence will be required for agreement to a re-inspection to be made on further request.

New ratings cannot be given purely on documentary evidence. A visit will always be made. The officer will not only check that the required improvements have been made, but also assess the ongoing standards. This means that the rating could go up, down or remain the same.

4. Fee Setting

Charges for animal activities licencing are calculated based the costs the council will incur through officer time, travel, production of reports, processing payments based on the costs the authority can reasonably anticipate. Fees comply with the councils charging policy <https://www.newcastle-staffs.gov.uk/all-services/your-council/policies-and-strategies-z/charging-policy> and guidance provided by the Local Government Association “Open for business: LGA guidance on locally set licence fees” <https://www.local.gov.uk/open-business-lga-guidance-locally-set-licence-fees> Fees at calculated annually and agreed by elected members. Where the council’s costs can be reduced through efficiencies, these savings will be reflected in future fees. Fees are set at a level which does not generate a surplus.

5. Refund Policy

Applicants may withdraw their applications, or surrender their licences at any point and may seek a refund by applying in writing. This should be by letter, addressed to Environmental Health,

Newcastle-under-Lyme Borough Council, Castle House, Barracks Road, Newcastle, Staffordshire ST5 1BL or by email to environmental_health@newcastle-staffs.gov.uk

Refunds will be calculated on a case by case basis for unused elements of the fee. For example if an application is withdrawn prior to an inspection being undertaken the majority of the fee may be returned, however, if an inspection has been undertaken officer time and travel costs incurred and those of any third party e.g. vet may be deducted.

Refunds will be by bank transfer, refund to a credit or debit card if used, or cheque and will be made within 10 working days of the request having been approved.

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HEADING Extended use of Fixed Penalty Notices

Submitted by: Head of Environmental Health

Portfolio: Environment & Recycling

Wards Affected: All

Purpose of the Report

To seek Committee's support to increase the number of environmental offences where enforcement may be delivered through issuing of penalty notices as an alternative to prosecution and support for the recommended new charges.

Recommendations

That Public Protection Committee agrees to increase the range of penalty notices which can be issued to include a) small scale fly tipping and b) littering from vehicles.

That committee recommends a charge of £400 in respect of fly tipping fixed penalties, reduced to £350 if paid within 10 days, and a charge of £100 in respect of littering from vehicles penalty charge notices, reduced to £75 if paid within 14 days

Reasons

Litter is recognised as a significant problem nationally with new enforcement powers devised to assist local authorities. There is an expectation that appropriate powers will be used where circumstances permit and that enforcement will be undertaken efficiently and consistently.

1. Background

- 1.1. More than one million cases of illegally deposited waste are reported to local authorities each year. Two thirds involve household waste. Across England the cost of clearing waste was approximately £60 million. About half of the reported cases in some way require enforcement action and nationally some 69,000 fixed penalty notices (FPNs) are issued.
- 1.2. The importance of tackling litter has been recognised in the government's Litter Strategy for England 2017 which committed, amongst other things to:

“Improve enforcement against offenders, including:

 - *delivering on our Manifesto commitment to review the case for increasing fixed penalties for littering and related offences;*
 - *introducing new regulations to help councils tackle littering from vehicles*
 - *providing improved guidance for councils on how to use their enforcement powers proportionately and appropriately, and*
 - *raising councils' and magistrates' awareness of the range of sanctions available to tackle littering and fly-tipping.”*
- 1.3. From 9 May 2016, local authorities in England have been able to issue fixed penalty notices between £150 to £400 for small-scale fly-tipping offences pursuant to the [Unauthorised Deposit of Waste \(Fixed Penalties\) Regulations 2016](#). This may be served as a criminal penalty in lieu of prosecution for a criminal offence – providing the authority can meet the criminal standard of proof (“beyond reasonable doubt”).

- 1.4. There is no specific definition of fly-tipping other than in the offences set out in section 33 of the Environmental Protection Act 1990, including the deposit or disposal of controlled waste without a waste management licence, or its disposal in a manner likely to cause pollution of the environment or harm to human health.
- 1.5. From 1st April 2018 [The Littering From Vehicles Outside London \(Keepers: Civil Penalties\) Regulations 2018](#) gave district councils in England (outside London) the power to require the keeper of a vehicle to pay a civil Penalty Charge Notice (PCN) if there is reason to believe that a littering offence has been committed from the vehicle. Evidence must satisfy the civil test (“on the balance of probabilities”).
- 1.6. To date the council has used FPNs for offences including: littering; breach of Community Protection Notices; and breach of Public Spaces Protection Orders, but not for Fly-tipping, opting instead to take such offences to the courts, where a larger fine could be imposed and the council’s costs recovered. PCNs have been used for matters such as parking offences.

2. **Issues**

- 2.1. There is an expectation that where enforcement powers and options are available that they should be adopted and used in appropriate circumstances.

Policy Publicity & Transparency

- 2.2. The authority is obliged to promote its enforcement strategy and make it clear which offences may be dealt with by means of a FPN or PCN. To this end the council’s current enforcement policy 2018-2022 states:

4.1.3 Fixed Penalty Notices

“Certain offences may be dealt with by fixed penalty notices (FPN) where prescribed by legislation. They are recognised as a low-level enforcement tool and avoid a criminal record for the defendant. Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice we may choose to administer one on a first occasion, without issuing a warning. Such matters may include dog fouling, littering, waste disposal activities, breach of a PSPO (Public Space Protection Order), and alcohol consumption in a defined area; however, this list is not exhaustive.

The alleged offender’s choice to not cooperate with the officer (e.g. refuse to give a name and address), to dispute or not pay the FPN will result in the case being escalated to the Magistrates Court.

We will only offer a FPN where we have robust evidence that an offence has been committed by the individual. This may be evidence gathered directly by Council Officers, or that passed to officers by partners documented in a form admissible to the courts.”

4.1.4 Penalty Charge Notices

Penalty Charge Notices (PCNs) (e.g. parking tickets) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt. A PCN does not create a criminal record and we may choose to issue a PCN without first issuing a warning.

- 2.3. Although no specific change would be required to the enforcement strategy or public consultation needed, the authority will ensure that it explains how any newly adopted penalties will be used on its public website if agreed.

- 2.4. DEFRA consulted on proposed modification to the 2006 Code of Practice on Litter and Refuse between April and June 2018. On 6th November 2018 it announced its intention to issue a revised code of practice on litter and refuse. No timescale is proposed. Accordingly there is currently no specific statutory guidance on either the use of Fly tipping FPNs or Litter from Vehicle PCNs.

Fly-tipping (Criminal Penalty)

- 2.5. Where a fixed penalty is offered and paid the defendant discharges their liability to criminal prosecution. In the context of fly tipping, until guidance confirms otherwise, this means the authority can no longer require them to remove deposited items, nor charge any costs it had incurred. The payment of a fixed penalty is therefore considered to remove any obligation they have for the waste.
- 2.6. The authority needs to carefully consider the penalty charge it sets, and the extent of fly tips where it offers a FPN. A low figure, for extensive fly tips could potentially be cheaper for the defendant than correct disposal charges. Similarly setting too high a penalty charge would reduce the number of cases where the penalty was accepted and commit the authority to seeking prosecutions, potentially with unrecoverable court costs.

Litter from vehicles (Civil Penalty)

- 2.7. To issue a penalty the authority must have evidence to the civil standard of proof (the balance of probabilities) that litter was thrown from the vehicles onto the council's "relevant land". This will generally include:
- The circumstances alleged to constitute the littering offence, including the registration mark (if known) of the vehicle concerned.
 - The make of vehicle, model and colour
 - The opening from which the litter was thrown (e.g. driver's side window)
- 2.8. Drivers of Public service vehicles, taxis and private hire vehicles are exempt from liability for a civil penalty notice if the offence is committed by a passenger. Similar exclusions apply to those who hire vehicles.
- 2.9. If there is sufficient evidence and either a Section 9 witness statement or a report from a council employee, or other credible witness, then the DVLA WEE system will be accessed to obtain details of the registered keeper of the vehicle. The civil penalty notice will be issued to the registered keeper of the vehicle unless it can be proven that the vehicle was 'kept' by someone else at that time.
- 2.10. Registered keepers who receive a civil penalty charge notice (PCN) will have a right to first make representations to the council under a number of grounds set out in this instrument (e.g. that the person was not the keeper of the vehicle at the time of the offence, or that the offence was not committed etc.) If this does not resolve the matter to their satisfaction, they have a right to appeal to an independent adjudicator. The Traffic Penalty Tribunal England and Wales offers this service, but the authority will be required to make a payment to them for each penalty notice issued, irrespective as to whether it is appealed. In addition the authority may need to be a member of PATROL (Parking and Traffic Regulation Outside London)
- 2.11. The current fee levied by The Traffic Penalty Tribunal England and Wales, per ticket, is £0.75. The authority is already a member of PATROL.
- 2.12. The authority must ensure that they appoint a staff member to make decisions on challenges. This person should not be involved in the issuing or processing of PCNs Elected members and unauthorised staff should not play any part in deciding the outcome

of individual challenges or representations. The regulations set out 12 grounds on which representations may be made. Representations could be considered by a Customer Relations officer, or other team outside of Environmental Health.

- 2.13. Penalties are payable within 28 days. An early-payment incentive can be adopted which reduces the civil penalty to not less than £50 if paid within 14 days. If the penalty is still unpaid after 28 days (clock paused during any appeal proceedings), the penalty may be increased by 100% (ie doubled) and it becomes recoverable as a civil debt or payable under a county court order, if the county court so orders. There are resource and financial implications to the authority of attempting to recover civil debts.
- 2.14. Councils can choose to set the level for littering penalties, within a range of £65 to £150, with a default of £100. It is recommended that the littering from vehicles civil penalty is set at the same level as the criminal depositing of litter penalty, which for Newcastle is proposed to be £100 from April 2019.

3. Options Considered

- 3.1. The authority is under no obligation to offer fixed penalties for small scale fly tipping. It has existing powers to deal with these offences through prosecution.
- 3.2. Fly tipping fixed penalty notices are not an appropriate sanction for operators in the waste management industry, repeat offenders or those responsible for large-scale fly-tipping or the fly-tipping of hazardous waste. These types of incident will continue to be enforced using prosecution powers.
- 3.3. If it can be proved which specific individual was responsible for littering from a vehicle, then criminal proceedings under the Environment Protection Act 1990 (EPA 1990) section 87 could be used as an alternative to a litter penalty charge notice.

4. Recommendation

- 4.1. That Public Protection Committee agrees to increase the range of penalty notices which can be issued to include a) small scale fly tipping and b) littering from vehicles.
- 4.2. That committee recommends a charge of £400 in respect of fly tipping fixed penalties, reduced to £350 if paid within 10 days, and a charge of £100 in respect of littering from vehicles penalty charge notices, reduced to £75 if paid within 14 days.

5. Decision Required

- 5.1. Committee is requested to support the recommendations above.

6. Outcomes Linked to Sustainable Community Strategy and Corporate Priorities

- 6.1. Litter and fly tipping are important issues for our residents and businesses. Adopting tools to enable effective enforcement aligns with the councils priority to deliver local services which work for local people

7. Legal and Statutory Implications

- 7.1. Specific rules are prescribed both for the issuing and escalation of Fixed Penalty Notices / Penalty Charge Notices. The authority is to ensure that it follows due process.

8. Equality Impact Assessment

- 8.1. No issues identified.

9. Financial and Resource Implications

- 9.1. The recommendations in this report do not commit the council to increasing the staff resource or budgets available for enforcement.
- 9.2. Whilst the aim of offering penalties is to conclude enforcement action promptly and efficiently without need for criminal court proceedings or civil debt recovery, where evidence is disputed or defendants uncooperative escalation will still be necessary.

10. Major Risks

- 10.1. No issues identified

11. Sustainability and Climate Change Implications

- 11.1. No issues identified

12. Key Decision Information

- 12.1. This is not considered to be a key decision.

13. Earlier Cabinet/Committee Resolutions

- 13.1. None

14. Background Papers

Litter Strategy for England, April 2017:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/630999/litter-strategy-for-england-2017-v2.pdf

Corporate Enforcement Policy 2018-21: <https://www.newcastle-staffs.gov.uk/all-services/your-council/policies-and-strategies-z/corporate-enforcement-policy>

DEFRA Fly-tipping statistics for England, 2017/18:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756306/FlyTipping_201718_Statistical_Release_rev.pdf

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HEADING **Public Protection and Public Protection Sub-Committee Arrangements**

Submitted by: **Head of Environmental Health**

Portfolio: **Finance & Resources**

Ward(s) affected: **All**

Purpose of the Report

To seek approval for the arrangements of the Public Protection Sub-Committee.

Recommendations

That Members receive the report and note the date and time that their proposed attendance at sub-committee is necessary.

And

Should members be unable to attend the sub-committee that they notify Democratic Services of an available substitute.

Reasons

On 21st November 2018 Council approved the recommendations of Licensing and Public Protection Committee constitutional arrangements to facilitate changes to the Public Protection sub-committee arrangements.

This report is to agree and implement those approved changes.

1. Background

1.1 In May 2018 the Committee arrangements for the creation of a joint Licensing and Public Protection Committee and a Public Protection Sub-Committee was approved and subsequently implemented.

1.2 At Public Protection's July meeting members requested a review of the Sub-committee arrangements, as member availability during the daytime was limited, in order to run the committees.

1.3 At the September meeting members agreed to make amendments to the Sub-Committee arrangements some of which required Council approval.

1.4 On 21st November Council approved the changes to the constitution to enable the changes to be implemented.

2. Issues

2.1 Members agreed the following public protection subcommittee arrangements:

- Meeting will be held on a Wednesday, alternating between 2pm and 6pm start times.
- Committees will be held about every 3 weeks.
- 5 reports/cases will be on the agenda, unless agreed with chair.
- Further meetings may be programmed, if needed.

- A programme of meetings and nominated members will be developed and reported to public protection committee. This will include 4 members per sub-committee to ensure a quorum of 3 members attendance.
- The sub-committee chair to be agreed between the sub-committee members.
- Should members be unable to attend the sub-committee that they notify Democratic Services of an available substitute.

2.2 Officers were also to asked to develop a programme around members' availability to attend the daytime and evening meetings. Members have therefore selected a preference for their availability and this has been taken into account when developing a programme of meetings. However, in order to develop the programme in accordance with the committee decision, it has meant that members that were able to attend both daytime and evening meetings have been scheduled to support more daytime than evening meetings.

2.3 An updated programme of meeting would be as follows:

Date	Time (pm)	Member 1	Member 2	Member 3	Member 4
09/01/2019	2	Cllr John Cooper	Cllr Trevor Johnson	Cllr Andrew Parker	Cllr Kyle Robinson
30/01/2019	6	Cllr Sylvia Dymond	Cllr Anthony Kearon	Cllr Mark Olszewski	Cllr Stephen Sweeney
20/02/2019	2	Cllr June Walklate	Cllr Simon White	Cllr Gill Williams	Cllr Ruth Wright
13/03/2019	6	Cllr John Tagg	Cllr Gill Waring	Cllr John Williams	Cllr Sylvia Dymond
03/04/2019	2	Cllr John Cooper	Cllr Trevor Johnson	Cllr Andrew Parker	Cllr Kyle Robinson
24/04/2019	6	Cllr Anthony Kearon	Cllr Mark Olszewski	Cllr Stephen Sweeney	Cllr John Tagg
15/05/2019	2	Cllr June Walklate	Cllr Simon White	Cllr John Williams	Cllr Ruth Wright
05/06/2019	6	Cllr Gill Waring	Cllr Gill Williams	Cllr Sylvia Dymond	Cllr Anthony Kearon
26/06/2019	2	Cllr John Cooper	Cllr Trevor Johnson	Cllr Andrew Parker	Cllr Kyle Robinson
17/07/2019	6	Cllr Mark Olszewski	Cllr Stephen Sweeney	Cllr John Tagg	Cllr Gill Waring
07/08/2019	2	Cllr June Walklate	Cllr John Williams	Cllr Ruth Wright	Cllr Gill Williams
28/08/2019	6	Cllr Simon White	Cllr Sylvia Dymond	Cllr Anthony Kearon	Cllr Mark Olszewski
18/09/2019	2	Cllr John Cooper	Cllr Trevor Johnson	Cllr Kyle Robinson	Cllr June Walklate
09/10/2019	6	Cllr Stephen Sweeney	Cllr John Tagg	Cllr Gill Waring	Cllr Andrew Parker
30/10/2019	2	Cllr Simon White	Cllr John Williams	Cllr Ruth Wright	Cllr Gill Williams
20/11/2019	6	Cllr Trevor Johnson	Cllr Sylvia Dymond	Cllr Anthony Kearon	Cllr Mark Olszewski
11/12/2019	2	Cllr John Cooper	Cllr Kyle Robinson	Cllr June Walklate	Cllr Simon White

Date	Time (pm)	Member 1	Member 2	Member 3	Member 4
08/01/2020	6	Cllr Stephen Sweeney	Cllr John Tagg	Cllr Gill Waring	Cllr Andrew Parker
29/01/2020	2	Cllr John Williams	Cllr Ruth Wright	Cllr Gill Williams	Cllr Kyle Robinson

4. **Proposal**

4.1 That Members receive the report and note the date and time that their proposed attendance at sub-committee is necessary.

And

Should members be unable to attend the sub-committee that they notify Democratic Services of an available substitute.

5. **Reasons for Preferred Solution**

5.1 To enable Committee to determine applications in the most efficient, effective and practical manner.

5.2 To ensure that the Council continues to provide safe transport for those wishing to use Private Hire and Hackney Carriage vehicles.

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

6.1 In line with the Council's objectives –

- Local services that work for local people
- A healthy, active and safe Borough
- A town Centre for all.

7. **Legal and Statutory Implications**

7.1 The Local Government Act 1972, section 101 allows the Council to arrange for a Committee, Sub-Committee or an officer or another local authority to carry out its powers and duties.

8. **Equality Impact Assessment**

8.1 The applications will be undertaken to accord with the Human Rights Act 1998, Article 6(1) guarantees an applicant a fair hearing and Article 14 guarantees no discrimination. . If the applicant disagrees with the members decision they have the right to appeal

9. **Financial and Resource Implications**

9.1 There will be resource implication including Member participation in the sub-committees and officer support from Environmental Health, Legal and Democratic services.

10. **Major Risks**

10.1 There are no major risks associated with this report

11. **Earlier Cabinet/Committee Resolutions**

Council Meeting 16th May 2018

Licensing & Public Protection Meeting 27th June 2018

Licensing & Public Protection meeting 18th September 2018

Council Meeting 21st November 2018

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