

Public Document Pack

Date of meeting Tuesday, 7th April, 2020
Time 2.00 pm
Venue via Video - Conference
Note for Members of the Public - if you wish to attend by audio or visual link please contact Denise French as below
Contact Denise French 01782 742211 or denise.french@newcastle-staffs.gov.uk



**NEWCASTLE
UNDER LYME**

BOROUGH COUNCIL

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

Licensing Sub-Committee

AGENDA

PART 1 – OPEN AGENDA

- 1 APPOINTMENT OF CHAIR
- 2 APOLOGIES
- 3 DECLARATIONS OF INTEREST
- 4 Appendix A - Natural Justice Guidance Notes (Pages 3 - 4)
- 5 Appendix B Human Rights Guidance Notes (Pages 5 - 6)
- 6 Appendix C Procedure to be followed by the Sub-Committee (Pages 7 - 8)
- 7 Review of Premises Licence - Castle Pizza Grill, 83 Knutton Lane, Newcastle under Lyme (Pages 9 - 46)

Members: Councillors G Hutton, M Olszewski and S Sweeney

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.

SUBSTITUTE MEMBER SCHEME (Appendix 9, Section 4 of Constitution)

The Constitution provides for the appointment of Substitute members to attend Committees. The named Substitutes for this meeting are listed below:-

Substitute Members: Any member from Licensing and Public Protection Committee

Contacting the Council:

Switchboard 01782 717717 . Text 07800 140048

Email webmaster@newcastle-staffs.gov.uk.

www.newcastle-staffs.gov.uk

If you are unable to attend this meeting and wish to appoint a Substitute to attend in your place you need to:

- Identify a Substitute member from the list above who is able to attend on your behalf
- Notify the Chairman of the Committee (at least 24 hours before the meeting is due to take place) NB Only 2 Substitutes per political group are allowed for each meeting and your Chairman will advise you on whether that number has been reached

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 considering allegations against Members you should have regard to the provisions of the Human Rights Act 1998 which embody the rules of natural justice.

Rights and Freedoms to be considered when determining matters

ARTICLE 6: RIGHT TO A FAIR TRIAL

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly, but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - (b) to have adequate time and facilities for the preparation of his defence;
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means, to pay for legal assistance, to be given it free when the interests of justice so require;
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

ARTICLE 8: RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 10: FREEDOM OF EXPRESSION

1. Everyone has the right to freedom of expression. These rights shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

ARTICLE 14: PROHIBITION OF DISCRIMINATION

The enjoyment of the rights and freedoms set fourth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

NB This is not a substantive right, but comes into play if other rights are likely to have been infringed. The prohibition is wide, but not exhaustive

ARTICLE 1: OF THE FIRST PROTOCOL PROTECTION OF PROPERTY

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

NB Possessions, in this context, includes the right to apply for a licence, the right to hold and retain a licence and the goodwill of a business.

NOTE In this context it is also particularly important for members to observe the rule against bias.

PROCEDURE TO BE FOLLOWED BY THE LICENSING SUB-COMMITTEE

NOTE:

All hearings will normally be held in public. However, the Licensing Sub-Committee may exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing or that part of the hearing taking place in public. A party or that party's representatives may be treated as a member of the public and therefore excluded from the meeting for all or part of the hearing, and all parties have the right to be represented and to call witnesses.

The Clerk to the Committee will have the right to ask questions on behalf of the Committee of any party to the proceedings.

PROCEDURE:

1. The Chair of the Sub-Committee will open the meeting and introduce the members of the committee and call upon the parties to identify themselves and their representatives and to identify any witnesses they intend to call.
2. The Chair of the Sub-Committee will call upon the Clerk to the Committee to explain to the parties the procedures which will be followed at the hearing. Unless the Chair directs otherwise, each party will normally have a maximum period of one hour in which to give further information and call any witnesses in support of their case. In every case, all parties will have an equal maximum period.
3. The Chair of the Sub-Committee will then normally call upon the interested party or the responsible authority which has made a relevant representation against the grant of an application to provide evidence in support of their representation.
4. The applicant will then have an opportunity to question that person
5. Members of the Sub-Committee will then have the opportunity to question that party or responsible authority.
6. Any person who has made relevant representations will then call any witness in support.
7. The applicant will then have an opportunity to question that witness.
8. Members of the Sub-Committee will then have the opportunity to question that person.
9. Stages 6 to 8 will then be repeated for each person making relevant representations.
10. The applicant will then have the opportunity to give evidence in response to the application and in response to the relevant representations which have been made.
11. The interested party or responsible authority will then have an opportunity to question the applicant.

12. Members of the Sub-Committee will then have the opportunity to question the applicant.
13. Stages 10 to 12 will be repeated for any witnesses on behalf of the holder of the applicant.
14. The interested party or responsible authority will have the right to address the sub committee.
15. The applicant will have the right to address the Sub-Committee in summing up his case.
16. All parties will then leave the room while the Sub-Committee consider their decision.
17. The Sub-Committee will normally make their determination at the conclusion of the hearing, but when this is not possible, will make its determination within the period of five working days beginning with the day on which the hearing was held.

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

LICENSING SUB-COMMITTEE

Date 7th April 2020

1. **LICENSING ACT 2003**

Submitted by: **Head of Environmental Health Services**

Portfolio: **Finance & Efficiency**

Ward(s) affected: **All**

Purpose of the Report

To inform the committee of an objection from Environmental Health in relation to a new premises licence application for Castle Pizza Grill on the grounds of Prevention of Public Nuisance.

Recommendations

In accordance with the Licensing Act 2003, the statutory guidance and the Council's own Statement of Licensing Policy the Sub-Committee must consider the Premises Licence and have regard to the four licensing objectives, as below, when making its decision:

- (i) The Prevention of Crime and Disorder
- (ii) Public Safety
- (iii) The Prevention of Public Nuisance
- (iv) The Protection of Children from Harm

Reasons

Mr Idris Anik has made an application for a new premises licence to allow the sale of late night refreshment for Castle Pizza Grill. Under consultation, the Council has received an objection from Environmental Health in relation to noise and odour under the grounds of Prevention of Public Nuisance.

1. **Background**

1.1 The licence information relating to this driver is as follows:

Premises: **Castle Pizza Grill**
Location: 83 Knutton Lane, Newcastle-under-Lyme, ST5 6ET
Licence Number: New Application
Reference Number: **020240**

1.2 **Mr Idris Anik** has made an application for a new premises licence for the premises Castle Pizza Grill, 83 Knutton Lane, Newcastle-under-Lyme, ST5 6ET to allow the sale of late night refreshment on Mondays to Sundays 23:00-02:30. The application is attached as Appendix A.

1.3 A representation was received from Environmental Health on the 10th March 2020 on the grounds of Prevention of Public Nuisance. The representation is attached as Appendix B. This representation followed discussions between Environmental Health and the applicant,

details of their discourse are attached as Appendix C with photos of the ventilation system attached as Appendix C1.

- 1.4 The premises is located on the edge of a primarily residential area adjacent to Newcastle Fire Station in the Knutton and Silverdale Ward on the boundary of the Town Ward. A copy of a location plan is attached as Appendix D.

Issues

- 2.1. The Licensing Act 2003 requires the Council to carry out its various licensing functions so as to promote the following four licensing objectives;
 - (i.) The Prevention of Crime and Disorder
 - (ii.) Public Safety
 - (iii.) The Prevention of Public Nuisance
 - (iv.) The Protection of Children from Harm
- 2.2. The Licensing Act 2003 requires the Council to publish a “Statement of Licensing Policy” that set out the policies the Council will generally apply to promote the licensing objectives when making decisions on applications made under the Act. Copies of the Council’s Statement of Licensing Policy and the Government’s Statutory Guidance will be available at the Licensing Sub-Committee hearing.
- 2.3. In making their decision on the application the Sub-Committee are obliged to have regard to the Statutory Guidance and the Council’s own Statement of Licensing Policy. The Sub-Committee must also have regard to the representations made and the evidence heard at the hearing. However, the Sub-Committee must disregard any representations that do not relate to the promotion of the four licensing objectives.
- 2.4. Whilst there are ongoing issues relating to noise nuisance at the premises these are not necessarily relevant to this application. The options considered need to be proportionate and based on the application which has been made.

3. **Options Considered**

- 3.1 The relevant options considered in relation to this application are:
 - a.) grant the application
 - b.) modify proposed and/or agree condition (including timings) and grant the application
 - c.) refuse the application

4. **Proposal**

- 4.1 The Sub-Committee, where it considers that action under its statutory powers is appropriate, may take any of the following steps for the promotion of the four licensing objectives. The steps available to the Sub-Committee are listed in Section 3.1 of this report.
- 4.2 For this purpose the conditions of the licence are modified if any of them are altered or omitted or any new condition is added.
- 4.3 The Sub-Committee are asked to note that they may not modify the conditions or take any other steps merely because they consider it desirable to do so. Any action taken must be appropriate in order to promote the licensing objectives.

5. **Reasons for Preferred Solution**

5.1 To ensure that the Council promote the licensing objectives in accordance with their statutory duty.

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

6.1 *The Council's corporate priorities are:*

- Local services that work for local people
- Growing our people and places
- A healthy, active and safe borough
- A town centre for all

7. **Legal and Statutory Implications**

7.1 The power to grant a premises licence falls under Section 18 of the Licensing Act 2003.

7.2 Hearings will be carried out in a fair, proportionate and consistent manner in line with:

Article 6(1) guarantees an applicant a fair hearing
Article 14 guarantees no discrimination

8. **Equality Impact Assessment**

8.1 Not applicable

9. **Financial and Resource Implications**

9.1 All parties have the right to appeal the decision at the Magistrates Court and if successful could apply for the award of costs.

10. **Major Risks**

10.1 Applicants have the right of appeal to Council decisions in respect of granting, suspending, revoking or refusing to renew driver licences. Should the applicant be successful then they may apply for the award of costs which the Council may have to pay in part or wholly.

11. **Sustainability and Climate Change Implications**

11.1 Not applicable

12. **Key Decision Information**

12.1 Not applicable

13. **Earlier Cabinet/Committee Resolutions**

13.1 The Licensing Committee has previously resolved to have regards to its Licensing Policy.

14. **List of Appendices**

14.1 Appendix A – Premises Application with Plan
Appendix B – Environmental Health representation

Appendix C – Location Plan of the premises

15. **Background Papers**

15.1 Licensing Policy 2015-2020

15.2 Licensing Act 2003 Statutory Guidance

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

Document is Restricted

This page is intentionally left blank

Appendix B

Steadman, Melanie

From: Thomas, Robert
Sent: 10 March 2020 18:30
To: Steadman, Melanie
Cc: Walters, Darren
Subject: [UNCLASSIFIED] Objection to application for licence

[Classification: NULBC **UNCLASSIFIED**]

Mel,

Just a quick email regarding the Caste Pizza Grill.

The applicant is looking to provide late night refreshment, cooking on the premises until 2.30am, with food being delivered to the customers by car.

The Council has produced a supplementary planning document in relation to this kind of activity which identifies the potential impacts of this kind of activity - https://www.newcastle-staffs.gov.uk/sites/default/files/IMCE/Planning/Planning_Policy/NonLocal/Hotfood%20takeaways%20SPG.pdf. This identifies the potential impacts of such an activity and the Council would usually expect an activity of this kind, in this kind of location, to close by 11pm (10.30pm on a Sunday) unless the applicant can satisfy the council that no nuisance would be caused.

I have visited the applicant and reviewed the operations there. The kitchen is served by an extraction system which discharges at low level, has no silencers fitted and is not odour abatement plant installed.

There are two flats above the proposed hot food takeaway. One is occupied by the applicant and the other is currently vacant. The premises extends under the second flat, and the fridges/freezers and lavatory are in a room below the second flat. No information has been supplied regarding the construction of the ceiling/floor and there is a potential for noise transmission from the take away to the flat at a time when the occupants would be attempting to rest, or sleep. I have attempted to obtain details of the construction and potential future occupancy of the flat from Aspire but, as yet, no information has been provided by them.

The flat is also likely to be adversely affected by noise and odours from the kitchen ventilation system. The applicant was advised as to how to address the noise and odours but indicated that the cost of these control measures would be prohibitive.

The applicant indicates that a single delivery vehicle will operate from the premises and will park upon the `car park` to the front of the takeaway. This is directly below the second flat at the premises and it is likely that the occupants would be subjected to engine noise from the delivery vehicles arriving and leaving, car doors banging and the delivery driver entering and leaving the premises. This would be at times that the occupants would be attempting to rest, or sleep. Alternative control measures were discussed with the applicant during my visit but they do not intend to apply these.

Other residential premises are located in close proximity and no other premises in the locality would be operating after early evening. Additionally, the road network is not particularly busy in the evening, or night time period, and so background noise levels are unlikely to mask noise from the operation of the premises. It is therefore considered that these other residential premises may be adversely affected by the operation of a hot food takeaway in this locality.

Given the above, the Environmental Health Department must object to the application as there is a potential for public nuisance to arise from noise and odours associated with the operation.

Regards,

Rob Thomas

Environmental Health Officer - Environmental Protection
Newcastle-Under-Lyme Borough Council
Castle House, Barracks Road, Newcastle under Lyme. ST5 1BL
01782 742582

www.newcastle-staffs.gov.uk

It takes 24 trees to produce 1 tonne of paper - think before you print!

This e-mail communication may be intercepted for regulatory, quality control, or crime detection purposes as per the Regulation of Investigatory Powers (RIP) Act. This message is intended only for the use of authorised person(s) ("the intended recipient") to whom it is addressed. It may contain information that is privileged and confidential within the meaning of the applicable law. Accordingly any dissemination, distribution, copying or other use of this message or any of its content by any other person may constitute a breach of civil or criminal law and is strictly prohibited. If you are not the Intended recipient please contact the sender as soon as possible. Any views expressed in this message are those of the individual sender and may not necessarily reflect the views of Newcastle under Lyme Borough Council.

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

Document is Restricted

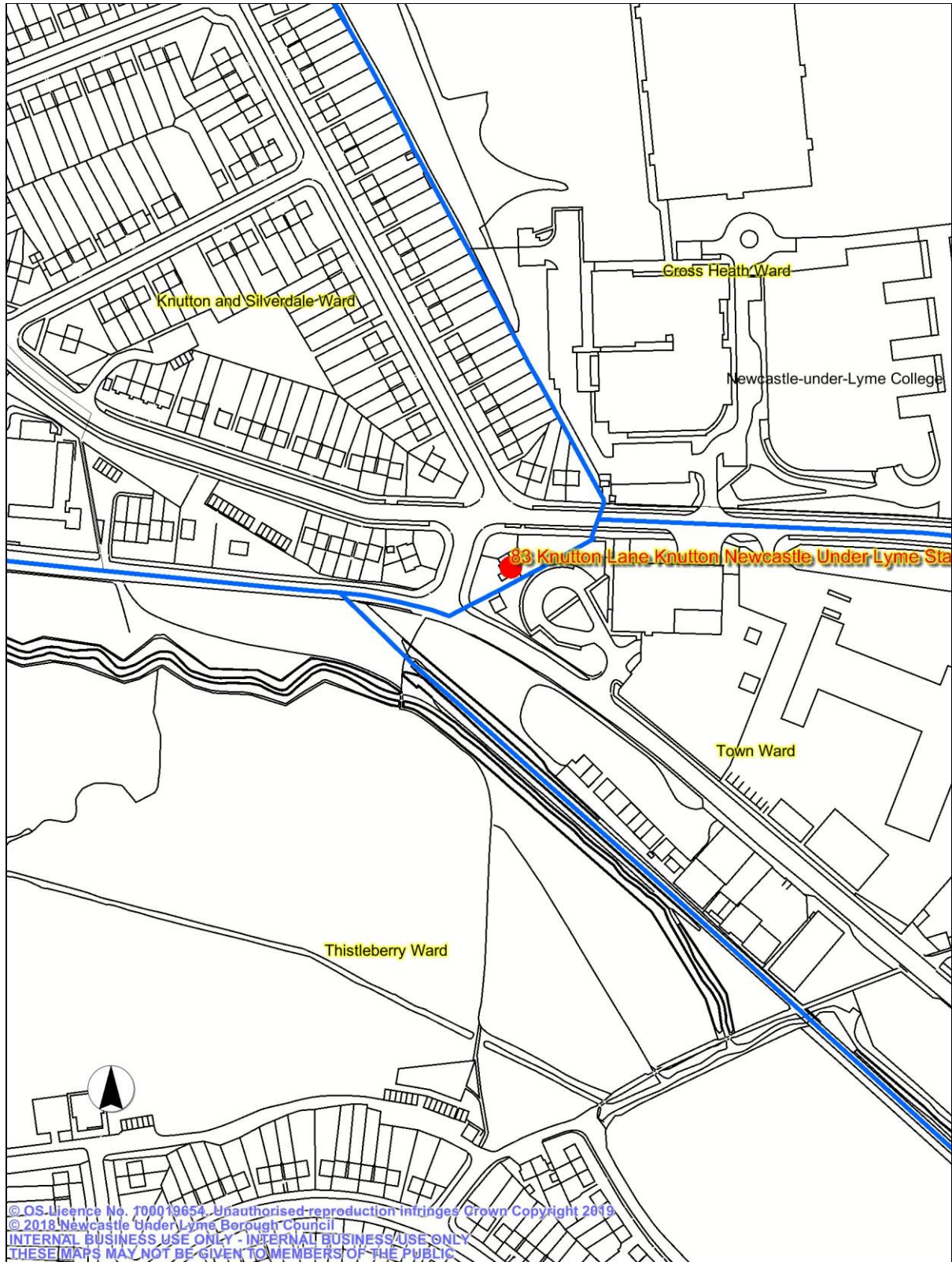
This page is intentionally left blank

Appendix C1





Appendix D



Newcastle Under Lyme Borough Council
Castle House
Barracks Road
Newcastle Under Lyme
ST5 1BL

Plan Produced 30.3.2020

This page is intentionally left blank