

Public Document Pack

Date of meeting Tuesday, 24th October, 2023

Time 7.00 pm

Venue Astley Room - Castle

Contact Geoff Durham 742222



**NEWCASTLE
UNDER LYME**
BOROUGH COUNCIL

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

Licensing & Public Protection Committee

AGENDA

PART 1 – OPEN AGENDA

LICENSING COMMITTEE

- 1 APOLOGIES
- 2 DECLARATIONS OF INTEREST IN RELATION TO LICENSING MATTERS
To receive declarations of interest from Members on items contained within the agenda
- 3 MINUTES OF A PREVIOUS MEETING (Pages 5 - 8)
- 4 FEES TO BE CHARGED FOR THE LICENSING OF SCRAP METAL DEALERS, GAMBLING & SEXUAL ENTERTAINMENT VENUE 2024-25 (Pages 9 - 14)
- 5 GAMBLING ACT 2005 CONSULTATION: MEASURES RELATING TO THE LAND-BASED GAMBLING SECTOR (Pages 15 - 34)

PUBLIC PROTECTION COMMITTEE

- 6 DECLARATIONS OF INTEREST IN RELATION TO PUBLIC PROTECTION MATTERS
To receive declarations of interest from Members on items contained within the agenda
- 7 PUBLIC SPACE PROTECTION ORDER - PARKS AND OPEN SPACES (Pages 35 - 56)

- 8 **CLEAN AIR ACT 1993 - CONSULTATION ON THE REVOCATION OF EXISTING SMOKE CONTROL AREAS AND DECLARATION OF A NEW BOROUGH WIDE SMOKE CONTROL AREA** (Pages 57 - 84)
- 9 **PRIVATE HIRE & HACKNEY CARRIAGE FEES & CHARGES 2024/2025** (Pages 85 - 90)
- 10 **MINUTES OF PUBLIC PROTECTION SUB-COMMITTEE MEETINGS** (To Follow)

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

PART 2 - CLOSED AGENDA

11 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.

12 URGENT BUSINESS

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

Members: Councillors Parker (Chair), Whieldon (Vice-Chair), S White, Barker MBE, Heesom, Sweeney, Wilkes, Skelding, Adcock, Dymond, Wright, Allport, J Williams, G Williams and Brown

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: | Hutchison | Brockie |
| | Panter | Beeston |
| | Johnson | Fox-Hewitt |
| | J Tagg | D Jones |
| | J Waring | Richards |
| | Burnett-Faulkner | Stubbs |

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

- 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.

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.

This page is intentionally left blank

Agenda Item 3

Licensing & Public Protection Committee - 05/09/23

LICENSING & PUBLIC PROTECTION COMMITTEE

Tuesday, 5th September, 2023
Time of Commencement: 7.00 pm

[View the agenda here](#)

[Watch the meeting here](#)

Present: Councillor Andrew Parker (Chair)

| | | | |
|--------------|----------|--------|---------|
| Councillors: | Whieldon | Wilkes | Allport |
| | Heesom | Adcock | Brown |
| | Sweeney | Dymond | |

Apologies: Councillor(s) S White, Barker MBE, Skelding, J Williams and G Williams

Substitutes: Councillor David Hutchison (In place of Mayor - Councillor Simon White)
Councillor Lesley Richards (In place of Councillor Gillian Williams)

| | | |
|-----------|-----------------|--|
| Officers: | Geoff Durham | Civic & Member Support Officer |
| | Nesta Barker | Service Director - Regulatory Services |
| | Jason Griffiths | Mobile Multi-Functional Team Leader |

Also in attendance:

1. **APOLOGIES**

There were no apologies.

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 4th July be agreed as accurate record.

4. **BUSINESS AND PLANNING ACT 2020 UPDATE**

The Service Director for Regulatory Services presented an update report on the Business & Planning Act 2020 and relevant regulations relating to the relaxations in respect of pavement licences and off-sales of alcohol.

The Act came into place to help premises survive and bounce-back from the pandemic lockdown with provisions including a new pavement license regime

administrated by local authorities and alcohol licensing changes to allow operators to serve alcohol for consumption off the premises.

Cllr Richards asked about the consultation referred to in paragraph 2.4. Were the 5 days given to the Council to respond a long enough period? – Officers had been dealing with applications during that timeframe and this was just a continuation of what was already in place.

Cllr Whieldon commented that short timescales were necessary for people to stay in business. Cllr Sweeney highlighted the importance of the provision and expressed his support to the proposal.

- Resolved:**
1. That the proposed amendments to the Business and Planning Act 2020 and contents of the Regulations be noted.
 2. That all Pavement Licences will be granted to expire on 30th September 2024 be noted.
 3. That the relaxation to allow premises to have 'off-sales' has been extended to 31st March 2025 be noted.

[Watch the debate here](#)

5. **DECLARATIONS OF INTEREST IN RELATION TO PUBLIC PROTECTION MATTERS**

There were no declarations of interest stated.

6. **RENTERS' (REFORM) BILL**

The Service Director for Regulatory Services presented the report advising members of the Renters' Reform Bill's currently progressing through Parliament. A White Paper issued by the Government in June 2022 outlined five ambitions and a 12-point plan of action to be addressed through the bill towards creating a Private Rented Sector with equal access to decent rented properties across the country and security of tenancies.

Members asked questions and responses were provided as follows:

- Cllr Brown asked about challenges faced by tenants such as the security of tenancy and affordability checks requiring to pay large amounts of rent upfront. – The proposals were about making more consistent tenancy arrangements across the sector. An ombudsman service was also put forward.
- Cllr Whieldon asked about the figure of 8,190 properties and wondered if this including housing providers such as Aspire. – The figure referred to the private sector only and so didn't include housing associations.

- Resolved:** That the progress of the Bill and the likely impacts on tenants, Newcastle Housing Advice and enforcement functions be noted

[Watch the debate here](#)

7. REVOCATION OF LITTLE MADELEY AIR QUALITY MANAGEMENT AREA

The Service Director for Regulatory Services presented a report on Little Madeley Air Quality Management Area advising that further to a 4 week consultation and given the consistent lower levels of nitrogen dioxide recorded the management area was no longer needed and should therefore be revoked.

The improvement could be explained by the reduction in the number of old polluting vehicles and higher emission standards for newer vehicles.

Resolved: That the Little Madeley Air Quality Management Area Number 4-Revocation Order 2023 be formally approved, taking effect from the 6th September 2023.

[Watch the debate here](#)

8. PUBLIC SPACE PROTECTION ORDER - GATING CONSULTATION UPDATE

The Mobile Multi-Functional Team Leader updated members on the outcome of the final 6 week public consultation on the proposed partial/full closures of 3 Public Rights of Way in the Borough to restrict antisocial behaviours.

Cllr Richards wondered about who would have access to the locations once closed. – The Council would hold the keys to the gates and accommodate residents' needs as required. Residents' access to their own properties would be enabled through the back of the buildings.

Resolved: That the content of this report be considered and that approval be given for a Public Space Protection Order for Gating to be granted by Newcastle-under-Lyme Borough Council as per appendix 1.

[Watch the debate here](#)

9. UPDATE ON RESULTS OF TAXI LICENSING APPEALS

No hearing had taken place since the last committee meeting.

Resolved: That the item be rescheduled.

10. MINUTES OF PUBLIC PROTECTION SUB-COMMITTEE MEETINGS

Cllr Brown pointed out that Cllr Gillian Williams' presence was omitted in the minutes of the last subcommittee meeting. The Chair confirmed her attendance.

Resolved: That the minutes of the Public Protection subcommittee meeting held on 12th July 2023 be received provided that Cllr Gillian Williams' presence be recorded.

11. DISCLOSURE OF EXEMPT INFORMATION

There was no disclosure of exempt information.

12. URGENT BUSINESS

There was no urgent business. The Service Director for Regulatory Services informed members that a licensing training would take place as a pre-meeting before the next Full Council meeting on the 20th September to improve councillors' awareness of licensing matters.

[Watch the debate here](#)

**Councillor Andrew Parker
Chair**

Meeting concluded at 7.25 pm



NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

CORPORATE LEADERSHIPS TEAM'S REPORT TO

Licensing and Public Protection Committee 24 October 2023

Report Title: FEES TO BE CHARGED FOR THE LICENSING OF SCRAP METAL DEALERS, GAMBLING, SEXUAL ENTERTAINMENT VENUE LICENSING 2024-25

Submitted by: Service Director - Regulatory Services & Licensing Administration Team Manager

Portfolios: Finance, Town Centres & Growth

Ward(s) affected: ALL

Purpose of the Report

For Members to consider the fees to be charged in relation to the licensing of Scrap Metal Dealers, Gambling and Sexual Entertainment Venues.

Recommendation

That Committee agree the fees to be charged for the licensing of Scrap Metal Dealers, Gambling and Sexual Entertainment Venues for 2024-25

Reasons

Decisions relating to the setting of non-statutory fees and charges for licensing have been delegated from Council to Licensing Committee.

1. **Background**

1.1 The approval of certain fees and charges relating to the licensing of Scrap Metal Dealers, Gambling and Sexual Entertainment Venues (SEVs) licensing regimes are Council functions.

1.2 Council at their meeting on 22nd February 2017 delegated this function to Licensing Committee.

Gambling:

1.3 The Gambling Act 2005 allows Licensing Authorities to set their own fees for premises licenses, subject to maximum levels which have been specified by Central Government.

1.4 The Councils Gambling Policy was implemented in January 2019, following approval from the Licensing Committee and Council.

Sexual Entertainment Venues:

1.5 The Local Government (Miscellaneous Provisions) Act 1982 ('the Act') introduced a licensing regime to control sex establishments. The Council adopted schedule 3 of the Act on the 31st March 2010 and the schedule took effect on the 3rd August 2010. This means the Council can control and regulate the operation of certain kinds of sex establishments within its area. No sex establishment can operate unless it has obtained a

licence from the Council. Any licence may contain conditions that will restrict how that sex establishment may trade.

- 1.6 The setting of fees for the licensing of sex establishment remains with the Local Authority. The licence is for a one year period. We do not currently have any Sex Establishment Venues.

Scrap Metal Dealers:

- 1.7 The Scrap Metal Dealers Act 2013 ('the SMDA13') introduced a licensing regime to control Scrap Metal Dealers, replacing the registration scheme used previously. The SMDA13 allows Licensing Authorities to set their own fees for both Site and Collectors licences.

2. **Issues**

- 2.1 The European Services Directive states (Art 12.2):

“Authorisation procedures and formalities shall not be dissuasive and shall not unduly complicate or delay the provision of the service. They shall be easily accessible and any charges which the applicants may incur from their application shall be reasonable and proportionate to the cost of the authorisation procedures in question and shall not exceed the cost of the procedures”

The Directive includes specific requirements that apply to the charging of fees. Charges must be reasonable and proportionate to the cost of the processes associated with a licensing scheme.

Councils must not use fees covered by the Directive to make a profit or act as an economic deterrent to deter certain business types from operating within an area.

- 2.2 Guidance for Local Authorities on the Provision of Service Regulations States (2nd Edition June 2009 Para 12d):

“Local Authorities must set fees that are proportionate to the effective cost of the procedure dealt with. As costs vary from region to region, central advice on the level of fees will not be appropriate. Local Authorities will need to bear in mind the threat of a legal challenge should the service provider feel that the level of fees are being used as an economic deterrent or to raise funds for local authorities Enforcement costs should not be assimilated with the application fee. This is to forestall the possibility of an unsuccessful applicant seeking legal remedy due to part of his fees having been used to subsidise his successful competitors.”

3. **Proposal**

- 3.1 That Committee agree the fees to be charged for the licensing of Scrap Metal Dealers, Gambling and Sexual Entertainment Venue Licensing. All proposed license fees and charges are detailed in table below:

| <u>Licences:</u> | <u>2023-24</u> <u>Fee</u> | <u>2024-25</u> <u>Proposed</u> <u>Fee</u> | <u>Difference</u> |
|--------------------------------------|--|--|--------------------------|
| General | | | |
| Sex establishments - application fee | 3,524.00 | 3,665.00 | 4% |
| Sex establishments - renewal | 3,524.00 | 3,665.00 | 4% |
| Sex establishments - variation | 1,193.00 | 1,241.00 | 4% |
| Sex establishments – transfer | 1,193.00 | 1,241.00 | 4% |

| | | | |
|--|----------|----------|---|
| General | | | |
| Scrap metal dealer site licence | 301.00 | 313.00 | 4% |
| Scrap metal dealer collectors licence | 238.00 | 248.00 | 4% |
| Gambling Act 2005 | | | |
| Lotteries - application fee | 40.00 | 40.00 | All Frozen or Set by Statute unless stated otherwise |
| Lotteries - annual fee | 20.00 | 20.00 | |
| Bingo - application fee | 3,500.00 | 3,500.00 | |
| Bingo - annual fee | 1,000.00 | 1,000.00 | |
| Bingo - application to vary | 1,750.00 | 1,750.00 | |
| Bingo – application for transfer | 1,200.00 | 1,200.00 | |
| Bingo – application to reinstate | 1,200.00 | 1,200.00 | |
| Track betting - application fee | 2,500.00 | 2,500.00 | |
| Track betting - annual fee | 1,000.00 | 1,000.00 | |
| Track betting - application to vary | 1,250.00 | 1,250.00 | |
| Track betting - application to transfer | 950.00 | 950.00 | |
| Track betting – application to reinstate | 950.00 | 950.00 | |
| Betting premises - application fee | 3,000.00 | 3,000.00 | |
| Betting premises - annual fee | 600.00 | 600.00 | |
| Betting premises - application to vary | 1,500.00 | 1,500.00 | |
| Betting premises - application to transfer | 1,200.00 | 1,200.00 | |
| Betting premises – application to reinstate | 1,200.00 | 1,200.00 | |
| Family entertainment centre - application fee | 2,000.00 | 2,000.00 | |
| Family entertainment centre - annual fee | 750.00 | 750.00 | |
| Family entertainment centre - application to vary | 1,000.00 | 1,000.00 | |
| Family entertainment centre - application to transfer | 950.00 | 950.00 | |
| Family entertainment centre – application to reinstate | 950.00 | 950.00 | |
| Adult gaming centre - application fee | 2,000.00 | 2,000.00 | |
| Adult gaming centre - annual fee | 1,000.00 | 1,000.00 | |
| Adult gaming centre - application to vary | 1,000.00 | 1,000.00 | |
| Adult gaming centre - application to transfer | 1,200.00 | 1,200.00 | |
| Adult gaming centre – application to reinstate | 1,200.00 | 1,200.00 | |
| Copy of any of the above licences (lost, stolen, damaged) | 25.00 | 25.00 | |
| Notice of Intention – 2 or less gaming machines | 50.00 | 50.00 | |
| Licensed Premises Gaming Machine Permits – more than 2 machines | 150.00 | 150.00 | |
| Licensed Premises Gaming Machine Permits – more than 2 machines – Variation | 100.00 | 100.00 | |
| Licensed Premises Gaming Machine Permits – more than 2 machines – Transfer | 25.00 | 25.00 | |
| Licensed Premises Gaming Machine Permits – more than 2 machines – Annual Fee | 50.00 | 50.00 | |
| Licensed Premises Gaming Machine Permits – more than 2 machines – Change of Name | 25.00 | 25.00 | |
| Licensed Premises Gaming Machine Permits – more than 2 machines – Copy (lost, stolen, damaged) | 15.00 | 15.00 | |
| Club Gaming/Club Machine Permits – New/Renew | 200.00 | 200.00 | |

| | | | |
|---|----------|----------|----|
| Club Gaming/Club Machine Permits for holders of Club Premises Certificates (under LA03) – New/Renew | 100.00 | 100.00 | |
| Club Gaming/Club Machine Permit – Annual Fee | 50.00 | 50.00 | |
| Club Gaming/Club Machine Permit – Variation | 100.00 | 100.00 | |
| Club Gaming/Club Machine Permit – Copy (lost, stolen, damaged) | 15.00 | 15.00 | |
| UFEC (Unlicensed family entertainment Centre – 10 year permit) | 300.00 | 300.00 | |
| Prize Gaming Permit – New/Renewal | 300.00 | 300.00 | |
| Prize Gaming Permit – Change of Name | 25.00 | 25.00 | |
| Prize Gaming Permit – Copy (lost, stolen, damaged) | 15.00 | 15.00 | |
| Temporary Use Notice (TUN) | 200.00 | 200.00 | |
| Occasional Use Notice (OUN) | 0.00 | 0.00 | |
| Casino Small – New application | 7,646.00 | 7,952.00 | 4% |
| Casino Small – Annual Fee | 3,823.00 | 3,976.00 | 4% |
| Casino Small - Variation | 2,548.00 | 2,650.00 | 4% |
| Casino Small – Application for Transfer | 1,639.00 | 1,705.00 | 4% |
| Casino Small – application to reinstate | 1,639.00 | 1,705.00 | 4% |

4. Reasons for Proposed Solution

4.1 The locally set fees can be used to cover the cost of the following:

Administration – This could cover basic office administration to process the licence application, such as resources, photocopying, postage or the cost of handling fees through the accounts department. This could also include the costs of specialist licensing software to maintain an effective database, and printing licences.

Initial visit/s – This could cover the average cost of officer time if a premises visit is required as part of the authorisation process. Councils will need to consider whether the officer time includes travel. It would also be normal to include ‘on-costs’ in this calculation. Councils will need to consider whether ‘on-costs’ include travel costs and management time.

Third party costs – Some licensing processes will require third party input from experts.

Liaison with interested parties – Engaging with responsible authorities and other stakeholders will incur a cost in both time and resources.

Management costs – Councils may want to consider charging an average management fee where it is a standard process for the application to be reviewed by a management board or licensing committee. However, some councils will include management charges within the ‘on-costs’ attached to officer time referenced below.

Local democracy costs – Councils may want to recover any necessary expenditure in arranging committee meetings or hearings to consider applications.

On costs – including any recharges for payroll, accommodation, including heating and lighting, and supplies and services connected with the licensing functions. Finance teams should be able to provide a standardised cost for this within each council.

Development, determination and production of licensing policies – The cost of consultation and publishing policies can be fully recovered.

Web material – The EU Services Directive requires that applications, and the associated guidance, can be made online and councils should effectively budget for this work.

Advice and guidance – This includes advice in person, production of leaflets or promotional tools, and online advice.

Setting and reviewing fees – This includes the cost of time associated with the review, as well as the cost of taking it to a committee for approval.

5. Options Considered

5.1 The Council has a duty to set fees for certain regimes where the amount is not set by statute. The SEV and Scrap Metal licensing regimes, alongside part of the Gambling Act, have such fees that can be set locally. All fees set must be proportionate and seek only to recover those areas set out in statute that we may recover. If the Council chose not to set fees then the applications made under these regimes would be subsidised by tax payer funds. This option has not been considered as it is felt that applicants for licences should be able to meet the costs of any application once they have been issued with the appropriate permission.

6. Legal and Statutory Implications

6.1 Hemming v Westminster

The degree to which fees and processes are proportionate has been tested in a legal challenge brought against the fee charged by Westminster City Council for licensing sex establishments. The case established a number of key points about setting fees under the Services Directive.

In Hemming v Westminster, the Court of Appeal ruled that the fees set must not exceed the costs of administering the licensing regime. This means the council was no longer able to include the cost of enforcement against unlicensed sex establishment operators when setting the licence fee, although the cost of visits to licensed premises to monitor compliance could be recovered through fees.

The judgement found that the annual reviews conducted by an officer of Westminster City Council were no substitute for determinations by the council. The judge rejected the council's submission that the fee had been fixed on an open-ended basis in 2004 so that the fee rolled over from one year to the next. Westminster City Council was consequently ordered to repay fees charged over that period.

Annual reviews allow for the fine tuning of fees and allow councils to take steps to avoid either a surplus or deficit in future years. This will not immediately benefit licence holders where the licence has been granted for a number of years and paid for in a lump sum, but will ensure new entrants to the licensing scheme are charged appropriately.

Where fees charged result in a surplus, Hemming v Westminster stated that this surplus must be used to reduce the fees charged in the following year. It is possible to extend the reinvestment of the surplus over more than one year, but this will need careful consideration about whether contributors may leave the licensing system over that period and therefore lose out on the return. Deficits can similarly be recovered, although

where there is a significant deficit, councils may want to consider how recovery can be undertaken over more than one year so as not to financially harm otherwise viable businesses.

The case of R v Tower Hamlets LBC (1994) is also relevant, as the High Court indicated that “a council has a duty to administer its funds so as to protect the interests of what is now the body of council tax payers”.

7. **Equality Impact Assessment**

7.1 Not applicable

8. **Financial and Resource Implications**

8.1 Should a challenge be made in relation to the fee level as detailed in the Hemming v Westminster there could be detrimental financial implications for the Council

9. **Major Risks**

9.1 As detailed under Legal and Statutory Implications

10. **UN Sustainable Development Goals (UNSDG)**

10.1



11. **Key Decision Information**

11.1 Not applicable

12. **Earlier Cabinet/Committee Resolutions**

12.1 The Council adopted schedule 3 of The Local Government (Miscellaneous Provisions) Act 1982 on 31st March 2010 which came into effect on 3rd August 2011.

12.2 Council delegated the function of setting fees and charges to Licensing Committee on 22nd February 2017.

13. **List of Appendices**

13.1 None

14. **Background Papers**

14.1 LGA Guidance on Local Fee Setting

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

CORPORATE LEADERSHIP TEAM'S REPORT TO

Licensing and Public Protection Committee 24 October 2023

Report Title: Gambling Act 2005 Consultation: Measures relating to the land-based gambling sector

Submitted by: Service Director - Regulatory Services

Portfolios: Finance, Town Centres and Growth

Ward(s) affected: All

Purpose of the Report

To inform the Committee of a Department for Culture, Media and Sport (DCMS) consultation that relates to the land-based gambling sector.

Recommendation

That Members note the content of the report and consultation response submitted.

Reasons

Following the Gambling Act Review White Paper: *High stakes: gambling reform for the digital age* publication in April 2023. DCMS have consulted upon various measures that relate to the land-based gambling sector with a view to modernising the regulation of gambling in Great Britain.

1. **Background**

1.1 The Gambling Act 2005 ("the Act") came into force in October 2007, replacing the Gambling Act 1968. The Act has had a number of minor amendments since it came into force but those have focused on areas over which licensing authorities have no control such as remote gambling, personal and operator licences.

1.2 The Gambling Act Review White Paper: *High stakes: gambling reform for the digital age* ("the Review") was published on 27th April 2023. It was in response to the significant change in the gambling sector landscape since 2005. The Review launched a call for evidence that ran from December 2020 to March 2021 and received 16,000 responses.

1.3 The Review focused on six main themes:

- online protections - players and products
- marketing and advertising
- the Gambling Commission's powers and resources
- dispute resolution and consumer redress
- children and young adults
- land-based gambling

This report relates solely to the land-based gambling element.

2. Issues

2.1 DCMS opened a consultation on 26th July 2023 that related to the land-based gambling sector. The consultation ran for 10 weeks and closed on 4th October 2023.

2.2 Land-based gambling and the associated licensed premises fall under the remit of licensing authorities. Remote gambling, personal licences and operator licences are under the remit of the Gambling Commission.

2.3 This is the first review of the land-based gambling sector since the Act came into force. It is widely accepted that the Act has not kept pace with technological advances, customer demand and licensing authorities' ability to effectively administer the regime. The consultation focuses on five main themes with DCMS seeking views on:

- Relaxation of casino rules: *allowing large casinos to increase the number of their gaming machines to 80, allowing smaller casinos more than 20 machines, on a pro rata basis commensurate to their size and permitting betting in all casinos;*
- Machines in arcades and bingo halls: *changing the 80/20 ratio governing higher to lower stake gaming machines to enable venues to better meet customer demands and save on energy costs;*
- Cashless payments on gaming machines: *helping future-proof the industry by consulting on the player protections needed to remove the prohibition on the direct use of debit cards on gaming machines;*
- Introduction of a legal age limit of 18 for certain gaming machines: *protecting children and young people by banning anyone under the age of 18 from playing low stake Category D slot machines that payout cash; and*
- Licensing authority fees: *ensuring that licensing authorities have the funding they need to carry out their licensing and enforcement duties for premises licences.*

2.4 The consultation document is broken down into five chapters, one for each of the above, and contains a total of 59 questions. The document provides an executive summary, an introduction to each chapter, a summary of the current regime, rationale for change and the government's proposals, and the consultation questions. A full copy of the document can be found as a weblink in the Background Papers section, paragraph 14.3, below.

2.5 A copy of the Council response, agreed with Chair prior to submission on 3rd October 2023, is attached as **Appendix A** and summarised below.

2.6 Relaxation of casino rules: The Council do not have any casinos within the Borough and as such have no experience or evidence that can be used to provide a response.

2.7 Machines in arcades and bingo halls: That of the three options proposed by DCMS, option 2 is the Council's preferred option due to it providing a balance of allowing operators to meet customer demand through flexibility of gambling facilities whilst also retaining or improving the safeguards already in place in relation to the number and category of machines 'available to use'.

2.8 Cashless payments on gaming machines: That cashless payment should be permitted to allow for the technological advancements but with requirements that regulate the amount of time customers can play, cooling off periods between payments, a maximum limit of each transaction, alerts to staff and additional information being provided to the customer around Safer Gambling and self-exclusion.

2.9 Introduction of a legal age limit of 18 for certain gaming machines: That low stake machines that resemble the same game play as higher stake machines by accessed only be customer 18 years or above. This would assist with the promotion of the licensing objective around protecting children (and other vulnerable people) from being harmed or exploited by gambling.

2.10 Licensing authority fees: That our fees currently cover the Council's costs of administration, compliance and enforcement however that is due to the relatively low number of premises within the Borough. It is noted that larger licensing authorities will have more licensed premises and the volume, density and type of premises will likely lead to extensive costs in relation to the administration and enforcement of the regime.

3. **Proposal**

3.1 That Members note the content of the report and consultation response submitted.

4. **Reasons for Proposed Solution**

4.1 Following the Gambling Act Review White Paper: *High stakes: gambling reform for the digital age* publication in April 2023 DCMS have consulted upon various measures that relate to the land-based gambling sector with a view to modernising the regulation of gambling in Great Britain. The Council have submitted a response to the consultation.

5. **Options Considered**

5.1 Officers considered the implications of the proposals made by DCMS taking account of the Borough's geography, the type and volume of premises, the number of complaints and compliance matters. This is the first consultation with proposed changes to the land-based sector since the Act came into force and it is important that stakeholders submit their views to help shape the future of the regime.

6. **Legal and Statutory Implications**

6.1 The Gambling Act 2005 and relevant secondary legislation will be amended if the proposals suggested by DCMS are approved.

7. **Equality Impact Assessment**

7.1 Not applicable

8. **Financial and Resource Implications**

8.1 No implications identified. It is proposed that licence fees are increased which if agreed would lead to an increase in income if licence numbers remained stable.

9. **Major Risks**

9.1 Not applicable

10. **UN Sustainable Development Goals (UNSDG)**

10.1



11. **Key Decision Information**

11.1 Not applicable

12. **Earlier Cabinet/Committee Resolutions**

12.1 Not applicable

13. **List of Appendices**

13.1 Appendix A – Consultation response sent 3rd October 2023

14. **Background Papers**

14.1 [Gambling Act 2005](#)

14.2 [High Stakes: gambling reform for the digital age – DCMS White Paper published 27th April 2023](#)

14.3 [DCMS Consultation document – published 26th July 2023](#)

Consultation questions

What is the name of your organisation? Newcastle-under-Lyme Borough Council

Is the organisation headquartered in Great Britain? (Yes / No / I don't know)

Which of the following best represents your organisation's sector? (remote gambling industry, land-based gambling industry, both remote and land-based gambling industry, gambling-related sector (e.g. advertising, sport, or broadcasting), government/regulator, lived experience peer support charity, academic/research, treatment provision, other, I don't know)

How many employees does the organisation you are responding on behalf of have globally? (1-9 / 10-19 / 20-49 / 50- 99 / 100 - 250 / 250 - 499 employees / 500+ employees / I don't know)

Are you happy for government to attribute responses to your organisation in a published response to this consultation? (Yes / No)

Is any of the information you have provided confidential, commercially sensitive or otherwise unsuitable for publication (including in anonymised)? If so, please indicate what. N/A

Chapter 1: Casino measures

Q1.a. Do you agree with the proposed gaming machine entitlements based on the sliding scale for (i) gambling space; (ii) table gaming space (iii) non-gambling area; and (iv) machine-to-table ratio? (Mandatory response)

[Yes / No / I don't know]

Q1.b. Please explain your answer. If you selected 'No', please provide an alternative proposal for gaming machine entitlements if you have one. (Optional response)

The LA do not have any casinos within the Borough and as such have no experience in relation to the issues being considered around them.

Q2.a. If you are an operator, do you intend to take up these new entitlements? (Mandatory response)

[Yes / No / I don't know / Not applicable]

Q2.b. [Shown if Yes is selected] Do you intend to site the maximum number of machines available to you? (Mandatory response)

[Yes / No / I don't know] N/A

Q2.c. Please explain your answer. (Optional response)

N/A

Q3.a. If you are an operator with more than one premises licence at the same location, do you intend to take up these new entitlements for each licence? (Mandatory response)

[Yes / No / I don't know / **Not applicable**]

Q3.b. Please explain your answer. (Optional response)

N/A

Q4.a Do you perceive there to be any issue with allowing multiple casino licences in the same physical location if gaming machine entitlements are increased as proposed? (Mandatory response)

[Yes / No / **I don't know**]

Q4.b. Please explain your answer, including any suggested changes to the regulatory framework where applicable. (Optional response)

The LA do not have any casinos within the Borough and as such have no experience in relation to the issues being considered around them.

Q5.a. How do you expect the measures allowing more gaming machines in 1968 Act casinos that meet certain size requirements to affect the demand for gaming machines in casinos? (Mandatory response)

[Large increase in demand / Small Increase in demand / No change in demand / Small decrease in demand / Large decrease in demand / **I don't know**]

Q5.b. Please explain your answer. (Optional response)

The LA do not have any casinos within the Borough and as such have no experience in relation to the issues being considered around them.

Q6.a. How do you expect the measures allowing more gaming machines in 1968 Act casinos to impact the provision of other product offerings within casinos e.g. table gaming? (Mandatory response)

[Large increase in the provision of other product offerings / Small increase in the provision of other product offerings / No change in provision of other product offerings / Small decrease in the provision of other product offerings / Large decrease in the provision of other product offerings / **I don't know**]

Q6.b. Please explain your answer. (Optional response)

The LA do not have any casinos within the Borough and as such have no experience in relation to the issues being considered around them.

Q7.a. The government is proposing to operate two regimes for 1968 Act casinos whereby they can either operate under the existing rules with no increase to their gaming machine allowance or they can take up their new gaming machine entitlements under the new rules. Do you agree with this proposal? (Mandatory response)

[Yes / No / **I don't know**]

Q7.b. Please explain your answer. (Optional response)

The LA do not have any casinos within the Borough and as such have no experience in relation to the issues being considered around them.

Q8. Please provide any views or any other information on the adequacy of player protections for those using gaming machines in casinos. Please include any examples of best practice if possible. (Optional response)

The LA do not have any casinos within the Borough and as such have no experience in relation to the issues being considered around them.

Q9.a Should the government introduce a 5:1 machine to table ratio for all casinos except those 1968 Act casinos that remain on the existing licensing regime? (Mandatory response)

[Yes / No / I don't know]

Q9.b. Please explain your answer. (Optional response)

The LA do not have any casinos within the Borough and as such have no experience in relation to the issues being considered around them.

Q10. Please share any evidence or information that is relevant to the proposed amendment to the definition of gaming tables since the government stated its intention to make this change in 2018. (Optional response)

N/A

Q11.a. Do you agree with the proposed (i) minimum gambling area; (ii) table gaming area; and (iii) non-gambling area requirements for 1968 Act casinos under the new regime? (Mandatory response)

[Yes / No / I don't know]

Q11.b. Please explain your answer. (Optional response)

The LA do not have any casinos within the Borough and as such have no experience in relation to the issues being considered around them.

Q11.c. Should the minimum table gaming area for Small 2005 Act casinos be reduced to 250sqm? (Mandatory response)

[Yes / No / I don't know]

Q11.d. Please explain your answer. (Optional response)

The LA do not have any casinos within the Borough and as such have no experience in relation to the issues being considered around them.

Q12.a. Should access to a greater number of gaming machines require compliance with each of the three size requirements outlined above? (Mandatory response)

[Yes / No / I don't know]

Q12.b. Please explain your answer. (Optional response)

The LA do not have any casinos within the Borough and as such have no experience in relation to the issues being considered around them.

Q13.a. Which approach do you think should be taken in relation to the maximum gambling area for 1968 Act casinos? (Mandatory response)

[All 1968 Act casinos must have a gambling area less than 1,500sqm / All 1968 Act casinos must have a gambling area less than 1,500sqm, with an exemption for 1968 Act casinos that are currently open and have a gambling area of 1500sqm or more / No maximum gambling area at all for 1968 Act casinos / Other / I don't know]

Q13.b. Please explain your answer. (Optional response)

The LA do not have any casinos within the Borough and as such have no experience in relation to the issues being considered around them.

Q14.a. Should separate table gaming areas of 12.5% or more only be allowed to count towards the total table gaming area for 1968 Act casinos under the new regime? (Mandatory response)

[Yes / No / I don't know]

Q14.b. Please explain your answer. (Optional response)

The LA do not have any casinos within the Borough and as such have no experience in relation to the issues being considered around them.

Q15.a. Under current regulations, the following areas can be used to calculate the non-gambling area in a 2005 Act and 1968 Act casino:

- Facilities for gambling cannot be provided in the non-gambling area.
- Lobby areas and toilet facilities may be taken into account but the non-gambling area shall not consist exclusively of lobby areas and toilet facilities.
- Each separate area comprising the non-gambling area, other than the lobby areas and toilet facilities, must contain recreational facilities that are available for use by customers on the premises.
- Any non-gambling area may consist of one or more areas within the premises

Do you agree that this should remain the same under the new regime? (Mandatory response)

[Yes / No / I don't know]

Q15.b. Please explain your answer, including an alternative solution for how to calculate non-gambling areas where applicable. (Optional response)

The LA do not have any casinos within the Borough and as such have no experience in relation to the issues being considered around them.

Q16.a. Should all 1968 Act casinos be permitted to offer sports betting, regardless of size? (Mandatory response)

[Yes / No / I don't know]

Q16.b. Please explain your answer. (Optional response)

The LA do not have any casinos within the Borough and as such have no experience in relation to the issues being considered around them.

Q17.a. Do you agree with the proposed entitlements for Self-Service Betting Terminals (SSBTs) based on the sliding scale? (Mandatory response)

[Yes / No / I don't know]

Q17.b. Please explain your answer, including an alternative proposal for SSBT entitlements where applicable. (Optional response)

The LA do not have any casinos within the Borough and as such have no experience in relation to the issues being considered around them.

Q18.a. If you are a casino licence operator, what impact is permitting sports betting expected to have on the Gross Gambling Yield (GGY) of your casino(s)? (Mandatory response)

[Significant increase / Slight increase / No impact / Slight decrease / Significant decrease / I don't know / Not applicable]

Q18.b. Please explain your answer. (Optional response)

N/A

Q19. If your casino already offers sports betting, what is the GGY from this activity? Please provide an estimate if you do not have an exact figure. (Optional response)

N/A

Q20.a. What impact is permitting sports betting expected to have on revenue from non-gambling activities e.g. increased income from sports bars which allow customers to place a bet? (Mandatory response)

[Increased revenue / No impact / Decreased revenue / I don't know]

Q20.b. Please explain your answer. (Optional response)

The LA do not have any casinos within the Borough and as such have no experience in relation to the issues being considered around them.

Q21. What player protections could be adopted in casinos for those customers participating in sports betting? (Optional response)

The LA do not have any casinos within the Borough and as such have no experience in relation to the issues being considered around them.

Q22.a. Do you agree with the proposal that casino operators will be required to notify licensing authorities and the Gambling Commission if they decide to take-up their entitlement to additional gaming machines under the new regime? (Mandatory response)

[Yes / No / I don't know]

Q22.b. Please explain your answer. (Optional response)

N/A

Q23.a. Should the operating and premises licence fees that apply to 2005 Act casinos also apply to 1968 Act casinos that increase their gaming machine entitlements? (Mandatory response)

[Yes / No / I don't know]

Q23.b. Please explain your answer. (Optional response)

N/A

Q24. Please upload any further evidence or any other information that should be considered as part of this consultation relating to casino measures. (Optional response)

The LA do not have any casinos within the Borough and as such have no experience in relation to the issues being considered around them.

Chapter 2: Machine allowance for arcades and bingo halls

Q25.a. There are 3 options the government is considering related to gaming machine allowance for arcades and bingo halls:

- **Option 1:** Introduce the 50/50 rule while maintaining current requirements for 'available for use'.
- **Option 2:** Introduce the 50/50 rule with an additional requirement that any gaming machine device types offered in individual premises (whether cabinets, tablets (fixed or hand-held) or in-fill) comprise a minimum of 50 percent Category C and D machines. Also, Category C and D gaming machine device types made available for use must be of similar size and scale to Category B.
- **Option 3:** Remove the 80/20 rule completely, applying no requirements on set gaming machine ratios.

How, if at all, would the approaches taken in Options 1, 2 and 3 impact the ability of business to meet customer demand for gaming machines? Please answer in comparison to the current 80/20 rule. (Mandatory response)

[A significant increase in ability to meet demand / A slight increase in ability to meet demand / No impact / A slight decrease in ability to meet demand / A significant decrease in ability to meet demand / I don't know]

Q25.b. Please explain your answer. (Optional response)

It would be different for Option 1, 2 and 3. Options 1 and 3 would likely lead to "A significant increase in ability to meet demand" and option 2 would likely have "A slight increase in ability to meet demand"

Q26.a. What impact would options 1, 2 and 3 have on Gross Gambling Yield (GGY) for businesses? (Mandatory response)

[A large increase in GGY / A small increase in GGY / No impact on GGY / A small decrease in GGY / A large decrease in GGY / I don't know]

Q26.b. If available, please provide evidence of the potential impact of Options 1, 2 and 3 on the GGY of operators and on the wider gambling sector. (Optional response)

N/A

Q27.a. There are 3 options the government is considering related to gaming machine allowance for arcades and bingo halls:

- **Option 1:** Introduce the 50/50 rule while maintaining current requirements for 'available for use'.
- **Option 2:** Introduce the 50/50 rule with an additional requirement that any gaming machine device types offered in individual premises (whether cabinets, tablets (fixed or hand-held) or in-fill) comprise a minimum of 50 percent Category C and D machines. Also, Category C and D gaming machine device types made available for use must be of similar size and scale to Category B.
- **Option 3:** Remove the 80/20 rule completely, applying no requirements on set gaming machine ratios.

What impact would Options 1, 2 and 3 have on the overall number of Category B machines? (Mandatory response)

[Significant increase / Small increase / No impact / Small Decrease / Significant Decrease / I don't know]

Q27.b. What impact would Options 1, 2 and 3 have on the overall number of Category C machines? (Mandatory response)

[Significant increase / Small increase / No impact / Small Decrease / Significant Decrease / I don't know]

Q27.c. What impact would Options 1, 2 and 3 have on the overall number of Category D machines? (Mandatory response)

[Significant increase / Small increase / No impact / Small Decrease / Significant Decrease / I don't know]

Q27.d. If available, please provide estimates of the potential impact of Options 1, 2 and 3 on the overall number of machines. (Optional response)

The overall number of machines would likely remain stable but with an increase in the availability of Category B machines and a decrease in Category C and D machines.

Q27.e. What impact would Options 1, 2 and 3 have on the product mix of Category B, C and D machines? For example, cabinets and terminal devices. (Optional response)

It would depend on the wording and which option was approved. Option 2 would likely lead to the product mix being similar to currently.

Q28. Please provide any evidence you have on the potential harm of implementing Options 1, 2 and 3 on customers. (Optional response)

All options would provide more machines with and greater stakes and therefore the possibility a higher risk of gambling harm.

Q29.a. There are 3 options the government is considering related to gaming machine allowance for arcades and bingo halls:

- **Option 1:** Introduce the 50/50 rule while maintaining current requirements for 'available for use'.
- **Option 2:** Introduce the 50/50 rule with an additional requirement that any gaming machine device types offered in individual premises (whether cabinets, tablets (fixed or hand-held) or in-fill) comprise a minimum of 50 percent Category C and D machines. Also, Category C and D gaming machine device types made available for use must be of similar size and scale to Category B.
- **Option 3:** Remove the 80/20 rule completely, applying no requirements on set gaming machine ratios.

What impact would Options 1, 2 and 3 have on the overall number of Category B, C and D gaming machines Please rank these options in order of preference, with 1 being your preferred option. (Optional response)

1. Option 2;
2. Option 1;
3. Option 3.

Q29.b. Please explain why this is your preferred option. (Optional response)

Option 2 is the preferred option as it offers the greatest balance of allowing operators more freedom and flexibility to meet customer demands whilst also retaining/improving the safeguards already in place in relation the number and category of machines 'available for use'.

Q30.a. Please outline any other proposals relating to machine allowances in arcades and bingo halls that you think that we should consider. (Optional response)

An amended ratio for machines categories. Currently at 80/20 and proposed at 50/50, there does not appear to any rationale provided as to why 60/40 or 70/30 etc have not been proposed.

Q30.b. What benefit would this proposal(s) offer in comparison to Options 1, 2 and 3? (Optional response)

Retention of lower stake machines brings with it a lower risk of gambling harm.

Q31. Please upload any further evidence or any other information that should be considered in this consultation relating to bingo and arcade gaming machine measures. (Optional response)

N/A

Chapter 3: Cashless payments on gaming machines

Q32.a. Should card account verification (such as chip and PIN or Face ID on mobile payment systems) be required if direct cashless payments are permitted on gaming machines? (Mandatory response)

[Yes / No / I don't know]

Q32.b. [Shown if Yes is selected] Should card account verification (such as chip and PIN or Face ID on mobile payment systems) be required on each transaction? (Mandatory response)

[Yes / No / I don't know]

Q32.c. How often should card account verification be required? For example, after a certain number of transactions or when a customer hits a spend threshold. (Optional response)

Every transaction

Q33.a. What should the maximum transaction value be for direct cashless payments on gaming machines? (Mandatory response)

[£20 / £50 / £100 / No Limit / Other / I don't know]

Q33.b. [Shown if Other is selected] Please specify what you think the maximum transaction should be (£). (Optional response)

N/A

Q34.a. Should the maximum deposit limit for direct cashless payments be the same as those set by the Circumstances of Use Regulations 2007? (Mandatory response)

[Yes / No / I don't know]

Q34.b. [Shown if No is selected] What do you think the maximum deposit limit should be for the following machine categories (£)? (Optional response)

N/A

- i) Category B1 machines
- ii) Category B2 machines?
- iii) Category B3 machines?
- iv) Category B3A machines?
- v) Category B4 machines?
- vi) Category C machines?
- vii) Category D machines?

[Sliding scale]

Q35.a. Should the maximum committed payment limit for direct cashless payments be the same as those set by Circumstances of Use Regulations 2007? (Mandatory response)

[Yes / No / I don't know]

Q35.b. [If No is selected] What do you think the maximum committed payment limit should be for the following machine categories (£)?

N/A

- i) Category B1 machines?
- ii) Category B2 machines?
- iii) Category B3 machines?
- iv) Category B3A machines?
- v) Category B4 machines?
- vi) Category C machines?
- vii) Category D machines? (Optional response)

[Sliding scale]

Q36.a. Should there be a minimum transaction time for customers making a cashless transaction on a gaming machine? (Mandatory response)

[Yes / No / I don't know]

Q36.b. [If Yes is selected] What do you think this minimum transaction time should be? (Optional response)

At least 30 seconds

Q37.a. Should there be voluntary limits (the ability for customers to set time and monetary thresholds) on gaming machines accepting direct cashless payments? (Mandatory response)

[Yes / No / I don't know]

Q37.b. How long do you think the cooling-off period should be if voluntary limits are hit? (Optional response)

At least 30 seconds

Q38.a. Should there be mandatory limits (default limits for time and monetary thresholds) on machines accepting direct cashless payments? (Mandatory response)

[Yes / No / I don't know]

Q38.b. [Shown if Yes is selected] What should the mandatory limits be? (Optional response)

- i) Monetary thresholds
- ii) Time thresholds

[Sliding scale]

Q38.c. [Shown if Yes is selected] How long do you think the cooling-off period should be once mandatory limits are hit? (Optional response)

At least 30 seconds

Q39.a. When limits are hit, should that result in a staff alert as well as a customer alert? (Mandatory response)

[Yes / No / I don't know]

Q39.b. Please explain your answer. (Optional response)

A staff alert would aid in the promotion of the objective and reduce the risk of gambling harm

Q40.a. In your view, is there any specific safer gambling messaging that should be considered within cashless gambling? (Mandatory response)

[Yes / No / I don't know]

Q40.b. [Shown if Yes is selected] What messaging would you suggest introducing? Please include any evidence of the potential impact of this messaging. (Optional response)

The same information contained with Safer Gambling materials and information on self-exclusion

Q41.a. Should session time be visible at all times to the customer on machines accepting direct cashless payments? (Mandatory response)

[Yes / No / I don't know]

Q41.b. Please explain your answer. (Optional response)

It will help the customer make informed decisions about their gambling

Q42.a. Should net position be visible at all times to the customer on machines accepting direct cashless payments? (Mandatory response)

[Yes / No / I don't know]

Q42.b. Please explain your answer. (Optional response)

It will help the customer make informed decisions about their gambling

Q43. Please upload any further evidence or any other information that should be considered in this consultation relating to cashless payment measures. (Optional response)

N/A

Chapter 4: Introduction of an age limit on 'cash-out' slot-style Category D machines

Q44.a. Should the government introduce an age limit on 'cash-out' Category D slot-style machines to 18 and over? (Mandatory response)

[Yes / No / I don't know]

Q44.b. Please explain your answer, providing any supporting evidence where available. (Optional response)

They are a similar machine to many Category A, B and C machines which are only legally played by adults.

Q45.a. Should 'cash-out' Category D slot-style machines be required to move to age-restricted areas in venues? (Mandatory response)

[Yes / No / I don't know]

Q45.b. Please explain your answer, providing any supporting evidence where available. (Optional response)

To limit the access and availability for children to play

Q46. What measures, if any, do you think venues should adopt to ensure that no under-18s play on 'cash-out' Category D slot-style machines if the age limit is introduced?(Optional response)

Separate areas from other Category D machines. Regular monitoring of the area by staff

Q47.a. Do you think premises should adopt voluntary test purchasing as a way to monitor under-18s activity on Category D 'cash-out' slot-style machines? (Mandatory response)

[Yes / No / I don't know]

Q47.b. Please explain your answer, providing any supporting evidence where available. (Optional response)

It would assist with the promotion of the licensing objective around protecting children (and other vulnerable people) from being harmed or exploited by gambling.

Q48.a. Should it be a criminal offence for a person to invite, cause or permit children or young persons to play on these machines? (Mandatory response)

[Yes / No / I don't know]

Q48.b. Please explain your answer, providing any supporting evidence where available. (Optional response)

It would assist with the promotion of the licensing objective around protecting children (and other vulnerable people) from being harmed or exploited by gambling.

Q49. Please upload any further evidence or any other information that should be considered as part of this consultation relating to an age limit on 'cash-out' Category D slot-style machines. (Optional response)

N/A

Chapter 5: Review of licensing authority fees

Q50.a. If you are a local authority/ licensing board, how much funding did you receive in licensed gambling premises fees in the 2022/23 financial year? Expressed in thousands of pounds. (Optional response)

£11,200

Q50.b. If you are a local authority/ licensing board, how many premises licence applications did you receive in the 22/23 financial year? (Optional response)

2

Q50.c. If you are a local authority/ licensing board, how many premises licences were live in your licensing area in the 22/23 financial year? (Optional response)

16

Q51.a. If you are a local authority/ licensing board, do you currently charge the maximum fees as set out in the Gambling Act 2005? (Optional response)

[Yes / No / I don't know]

Q51.b. [Shown if No is selected] Please explain why you do not currently charge the maximum fees as set out in the Gambling Act 2005. (Optional response)

N/A

Q52.a. How much funding do you estimate is needed for administration and the enforcement of licences annually? Expressed in thousands of pounds. (Optional response)

£7000-8000

Q52.b. Please explain your answer, providing any supporting evidence where available. (Optional response)

All premises require:

- an annual fee letter/invoice to be sent (approx. 15min/each);
- receipting payment, updating records etc (approx 45min/each);
- A compliance visit annually (approx. 2x officers and each visit 2.5hrs, including preparation, travel, attendance and follow up);

Some premises:

- An average new application takes 1x officer 8 hours in correspondence, updating of system, discussion with responsible authorities etc
- Possible enforcement and/or follow up visits to small number of total premises.

If a sub-committee was necessary that would add another officer's time, input from legal officer, further correspondence and setting up of the meeting, attendance at the meeting from at least 1x licensing officer, 1x legal officer, 1x democratic services officer and three elected Members.

Q53. Are there any functions that local authorities/ licensing boards do not exercise at present, but could if fees were increased (e.g. a more proactive enforcement policy)? (Optional response)

More proactive enforcement, more proactive engagement with relevant stakeholders in relation to licensed premises

Q54.a. The government is considering raising maximum licence fees for gambling premises. Should maximum fees be increased, how much should they be increased by? (Mandatory response)

[10% / 20% / 30% / A different amount / I do not think fees should be increased / I don't know]

Q54.b. Please explain your answer. (Optional response)

Due to the small number of licensed premises within the Borough, and the low level of complaints, new applications, amendments to existing licences etc the current annual fees cover our costs. However I am aware that larger local authorities have more licensed premises and the volume, location, density and type of premises will likely lead to extensive costs in relation the administration and enforcement of the regime.

Q55.a. What do you think are the potential impacts of raising licence fees on licensing authorities? (Optional response)

It would allow LAs to do more work around the compliance and enforcement of licensed premises, engaging with operators and other relevant stakeholders and ensure an appropriately robust position on who the LA will work towards the promotion of the objectives.

Q55.b. What do you think are the potential impacts of raising licence fees on gambling companies? (Optional response)

Minimal as the application and annual fee costs are such a small amount in comparison to their net income across the year.

Q55.c. What do you think are the potential impacts of raising licence fees on the local area? (Optional response)

Minimal. All operators in our locality are large national chains and as such it is unlikely that any increase would have a detrimental impact on the local area.

Q56. Please provide any additional views or evidence on the potential impacts of raising licence fees here. (Optional response)

N/A

Q57. Please upload any further evidence or any other information that should be considered in this consultation relating to licensing authority fees. (Optional response)

N/A

Q58. The Department for Culture, Media and Sport will have due regard to the public sector equality duty, including considering the impact of these proposals on those who share protected characteristics, as provided by the Equality Act 2010. These are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

N/A

Q59. Please upload any further supporting evidence that you wish to share. (Optional response)

N/A

This page is intentionally left blank

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

REPORT TO LICENSING AND PUBLIC PROTECTION COMMITTEE

24 October 2023

Report Title: Public Space Protection Order – Parks and Open Spaces

Submitted by: Service Director – Neighbourhood Delivery

Portfolios: Sustainable Environment; Community Safety and Wellbeing

Ward(s) affected: ALL

| | |
|--|---|
| <p><u>Purpose of the Report</u></p> <p>To provide the committee with the outcome of the final 6 week public consultation on the proposed Parks and Open Spaces Public Space Protection Order in Newcastle-under-Lyme.</p> | <p><u>Key Decision</u> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> |
| <p><u>Recommendation</u></p> <p>That Committee:-</p> <p>1. Consider the content of this report and give approval for a Public Space Protection Order for Parks and Open Spaces to be granted by Newcastle-under-Lyme Borough Council as per appendix A.</p> | |
| <p><u>Reasons</u></p> <p>The Council is seeking to use its powers to prohibit, restrict or control defined activities relating to dog control and alcohol consumption in parks and open spaces in the Borough.</p> | |

1. Background

1.1 A Public Space Protection Order is a tool under the Anti-social Behaviour, Crime and Policing Act 2014. This legislation allows for an Order to identify a particular space or area in which it is applied, and make requirements or prohibitions, or both within that space or area. This means that the Local Authority can, by virtue of the Order, require people to do, or not to do specific things in that space or area. The Local Authority has the powers to grant the prohibitions/requirements where it believes that they are reasonable in order to reduce or prevent the unwanted issues. The order can be applied to specific people or everyone within an area and can apply at all times or within specific times. The Order can apply for a maximum of

3 years upon which the process of reviews and consultation must be repeated to check whether the issues are still occurring, and the order is having the required effect.

- 1.2 Failure to comply with either a prohibition, or requirement stated within the order is a Level 3 offence. Upon summary conviction (offences heard within the Magistrates Court) defendants can face a fine. The defendant cannot be found guilty of an offence under a prohibition/requirement where the Local Authority did not have the power to include it in the order. The authority has the option to either prosecute or issue a Fixed Penalty Notice (FPN) to discharge liability to convict (s67 & 68 of the ASB, Crime and Policing act).
- 1.3 Since November 2017 a number of 'Dog Control' orders have been in force, which apply in a variety of locations across the borough. The orders were reviewed and extended in 2020. The current orders are due to expire in November 2023 and the Council is now required to review them. Officers are also using this review as an opportunity to scope and develop the Public Space Protection Order to cover a number of community safety and anti-social behaviour related controls as these are often specific to the borough's parks and open spaces.
- 1.4 Alcohol Prohibition Zones have been previously introduced in parks and open spaces to help reduce anti-social behaviour related to alcohol consumption. However, these were not renewed as part of the legislative changes in 2014 and therefore the Council no longer has any alcohol prohibition zones in its parks and open spaces. The draft PSPO as shown in appendix A proposes to include controls for behaviours that are problematic for parks and open spaces and assist with ensuring that these spaces are used in the correct manner.

2. **Issues**

- 2.1 The Evidence Base for making a PSPO - The Authority is obliged to make proportionate and reasonable use of its powers and should reflect if there is the need to introduce a control. Our current evidence is that although there is generally a high level of compliance with present controls, dog related complaints still represent a considerable caseload for the authority with 362 complaints passed to the Council's dog wardens and 78 relating to dog fouling. In addition to this Streetscene have had 84 reports in regard to the removal of dog fouling. It is also known that there are ongoing concerns around anti-social behaviour in parks and open spaces, including graffiti, underage drinking and other types of behaviours that are likely to cause alarm, harassment and distress to users of the parks. The consultation has helped to clarify that our residents believe there is an issue which needs to be addressed.
- 2.2 Finance & Resources - Permanent signage cost is dependent upon which controls are adopted and where they are applied. Signage must contain the date the Order becomes effective, so would have a maximum life of three

years. The typical cost of placing an A5 sized permanent sign would cost £30-£35 (excluding installation)¹. The cost of adding new signs purely relating to dog controls at each entrance to the key locations listed for exclusions or dogs on leads controls is to be scoped and options considered i.e.; permanent signs, temporary signs. There is an option for this information to be contained on other signage at these locations e.g. park notice boards, and officers will look if there is a more cost effective way to promote controls at these locations.

The level of signage required will depend on public support for proposals. Costed options in respect of signage will be produced for consideration in a future report if necessary.

The annual cost of sign replacement will depend on the resilience of signs initially placed and they may need to be replaced if damaged.

If controls cease, there is a risk that with the removal of potential penalties, some currently compliant dog owners may adversely change their behaviour – for example opting not to remove fouling. Whilst savings on enforcement could be made, there is likely to be a net cost to the Authority with increased numbers of complaints and action needed to maintain the cleanliness of public places.

- 2.3 Residents' Expectations and Authority Priorities - Whenever any form of dog related control is considered the Authority receives considerable feedback from its residents and animal welfare charities and needs to balance the needs of its dog owning residents with the expectations of the broader community. As part of this review the PSPO's will also cover some community safety elements again taking into consideration complaints received from members of the public. Either adopting or ceasing controls may initially be contentious.

Key corporate priorities are currently:

- Priority Three: healthy, active and safe communities

Setting and policing rules in relation to any adopted order in regard to compliance will encourage residents to make full use of them – running, walking, cycling, using play equipment etc. which aligns to priority three.

Rules in relation to dog control, specifically fouling and the failure to remove dog faeces also relate to priority three.

- 2.4 Proposal and reasons for preferred solution

Members are asked to review the results of the final 6 week consultation for Parks and Open Spaces as shown in Appendix A and consider an updated proposal based on the results of that consultation.

¹ Price based on composite signs attached with metal clips.

The proposals, as currently drafted, best match current dog controls and will benefit from the additional controls in relation to community safety.

The controls are currently drafted to be as flexible as possible and enable the Authority to effectively target enforcement. The proposed controls are considered suitable for current needs and will be reviewed again in 3 years' time.

3. Consultation results

A full copy of the consultation results is attached to this report and can be found in Appendix B.

Headline findings show:-

- 39 responses were received as part of the consultation;
- There is support for all of the proposals
- The highest support was for;
 - 1) Requiring a person in charge of a dog to clean up if their dog fouls in a public place
 - 2) Keeping dogs on leads in crematorium, cemeteries and churchyards and unfenced children's play areas.
- The lowest support was for:
 - 1) Requiring dogs to be kept on leads in open spaced owned by town/parish council.
 - 2) Excluding dogs from open spaces owned by parish/town councils.
- 92% in favour of restricting owners to six dogs in each mentioned location.
- 56% agreed that dogs should be kept on a lead on marked out sports pitches.

4. Recommendation

That Committee consider the content of this report and give approval for a Public Space Protection Order for Parks and Open Spaces to be granted by Newcastle-under-Lyme Borough Council as per appendix A.

5. Reasons

5.1 The Council is seeking to use its powers to prohibit, restrict or control defined activities relating to dog control and alcohol consumption in parks and open spaces in the Borough.

6. Options Considered

6.1 'Do nothing' – not making an order could lead to a potential increase in dog fouling across the Borough and an increase in complaints and requirements for additional street cleansing. Also it could lead in an

increase in incidents where residents, children and wildlife are injured due to dogs not being controlled.

6.2 Utilise other powers under the Anti-social behaviour, Crime and Policing Act 2014. All available tools are considered when there are problems of anti-social behaviour. However, where it is not possible to identify the individuals responsible other options have to be considered in order to protect the communities who are suffering from anti-social behaviour.

7. Legal and Statutory Implications

7.1 PSPOs can be challenged on the grounds that the Local Authority, under the legislation, did not have the power either to make or vary the Order or include particular prohibitions or requirements, or that proper processes had not been followed (as prescribed by the legislation). Challenges must be made to the High Courts within 6 weeks of the Order being made/varied and by an individual who lives in, regularly works in, or visits the restricted area. The High Court can quash, uphold or vary the PSPO and may decide to suspend the operation of the PSPO pending the verdict.

8. Equality Impact Assessment

8.1 The recommendations in this report do not adversely affect any protected groups.

8.2 Those needing an assistance dog are defined in the Anti-social Behaviour, Crime and Policing Act as exempted from the PSPO requirements.

9. Financial and Resource Implications

9.1 The Authority is obliged to publicise controls and to ensure that appropriate signs are displayed. Signage would have a maximum life of 3 years. It is envisaged that signs in some locations may need regular replacement as a result of damage or wear.

9.2 The workload of installing additional signs could be considerable and could impact on staff capacity to deliver core services, therefore sites may need to be prioritised for signage on a phased basis.

9.3 Any changes to dog related controls may generate considerable interest and an increased volume of calls, emails and visits requiring a response from staff. This would be dealt with by the Customer Hub using an agreed and scripted response, and by providing information on the Council's website.

9.4 There is an expectation that enhanced enforcement would follow the implementation of revised controls. The work will be undertaken primarily by the Mobile Multi-Functional Team, with support from Staffordshire Police in relation to alcohol prohibition.

10. Major Risks & Mitigation

10.1 There is a risk of legal challenge if the Authority does not follow the correct processes to devise, consult and adopt a PSPO with associated reputational damage.

10.2 Whilst the majority of residents are likely to support pragmatic and practical controls, there is a risk that some may choose to disregard controls if they feel they are unfair.

11. UN Sustainable Development Goals (UNSDG)

11.1 The proposal contributes towards the following UNSDGs:



11.2 This project contributes to the UN Sustainable Development Goals above as follows:

- Good health and well being – this project will help to support the well being of residents across the Borough who are using parks and open spaces in a clean and safe manner.
- Peace, justice and strong institutions – this introduction will encourage responsible dog ownership and tackle those who do not comply with the prohibitions.

12. Key Decision Information

12.1 Not applicable

13. Earlier Cabinet/Committee Resolutions

13.1 <https://moderngov.newcastle-staffs.gov.uk/ieListDocuments.aspx?CId=435&MId=4078&Ver=4>

14. List of Appendices

14.1 Appendix A: Draft Public Space Protection Order

14.2 Appendix B : PSPO consultation results Summer 2023

15. Background Papers

15.1 Antisocial Behaviour Crime & Policing Act 2014
<http://www.legislation.gov.uk/ukpga/2014/12/part/4/chapter/2/enacted>

- 15.2 Guidance in respect of PSPOs
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final_2_.pdf
- 15.3 Further details on proposals and frequently asked questions
www.newcastle-staffs.gov.uk/dogcontrols
- 15.4 Requirements in respect of publicising public space protection orders
http://www.legislation.gov.uk/uksi/2014/2591/pdfs/uksi_20142591_en.pdf
- 15.5 Amendment to scheme of delegation granting Public Protection Committee power to make public space protection orders.
<http://moderngov.newcastle-staffs.gov.uk/documents/s13554/Cabinet%20Report%20-%20ASB%20Legislative%20changes%20-%20Oct%202014%20v18%20021014.pdf>

This page is intentionally left blank

The Anti-Social Behaviour, Crime and Policing Act 2014
Public Spaces Protection Order
(The Borough Council of Newcastle-under-Lyme) 2023 – No. 4 of 2023

The Borough Council of Newcastle-under-Lyme (in this Order called “the Authority”) in exercise of its powers under Section 59, 64 and 72 of the Anti-social Behaviour, Crime and Policing Act 2014 (‘the Act’) hereby makes the following Order:

1. This Order comes into force on 16th November 2023 and shall have effect for a period of three years from the date thereof (unless it is extended pursuant to Section 60 of the Act).
2. This Order applies to the areas within the Borough of Newcastle as specified in the Schedule to this Order being public spaces in the Council’s area to which the Act applies (‘the Restricted Areas’).

BY THIS ORDER

3. The effect of this Order is to impose the following prohibitions and/or requirements in the Restricted Areas at all times: -

3.1 Alcohol

- Any person is prohibited from having an open alcohol container in their possession;
- Any person is required to surrender any open alcohol container in their possession when required to do so by an Authorised Officer of the Council or Staffordshire Police.

3.2 Dog Fouling – failure to remove dog faeces

If within the administrative area of the Authority a dog defecates at any time on land to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission and a person who is in charge of the dog at the time fails to remove the faeces from the land forthwith, that person shall be guilty of an offence unless:

- he has reasonable excuse for failing to do so;
- or
- the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so.

3.3 Dogs on Leads by Direction

A person in charge of a dog shall be guilty of an offence if, at any time, within the administrative area of the Authority he does not comply with a direction given to him by an authorised officer of the authority to put and keep the dog on a lead unless

(a) he has reasonable excuse for failing to do so;

or

(b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so.

An authorised officer may only give a direction under this order if such restraint is reasonably necessary to prevent a nuisance or behaviour by the dog that is likely to cause annoyance or disturbance to any other person, or another animal (including pets or wildlife).

3.4 Dogs on Leads

A person in charge of a dog shall be guilty of an offence if, at any time, on land detailed in **Schedule 1** below, he does not keep the dog on a lead unless

(a) he has reasonable excuse for failing to do so;

or

(b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so.

3.5 Dog Exclusion Areas

A person in charge of a dog shall be guilty of an offence if, at any time, he takes the dog onto, or permits the dog to enter or to remain on, any land detailed in **Schedule 2** below, unless

(a) he has reasonable excuse for failing to do so;

or

(b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so

3.6 Maximum six dogs

A person in charge of a dog shall be guilty of an offence if, at any time, he takes more than six dogs onto, or permits more than six dogs to enter or to remain on, any land detailed in **Schedule 3** below unless

(a) he has reasonable excuse for failing to do so;

or

- (b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his doing so.

3.7 Means to pick up dog fouling

A person in charge of a dog shall be guilty of an offence if, at any time, within the administrative area of the Authority he does not have with him an appropriate means to pick up dog faeces deposited by that dog unless:

- (a) he has reasonable excuse for failing to do so;

or

- (b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so.

The person shall not be guilty of an offence if, on request from an authorised officer, the person in charge of the dog produces an appropriate means to pick up dog faeces.

Exemptions and Definitions

- i) Part 3.2 – 3.7 of this order shall not apply to a person who:
 - (a) is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948; or
 - (b) is deaf, in respect of a dog trained by Hearing Dogs for Deaf People (registered charity number 293358) and upon which he/she relies for assistance; or
 - (c) has a disability which affects his/her mobility, manual dexterity, physical coordination or ability to lift, carry or otherwise move everyday objects, in respect of a dog trained by a prescribed charity and upon which he/she relies for assistance.
- ii) For the purpose of this Order:
 - (a) A person who habitually has a dog in his possession shall be taken to be in charge of the dog at any time unless at that time some other person is in charge of the dog;
 - (b) Placing the faeces in a receptacle on the land which is provided for the purpose, or for the disposal of waste, shall be sufficient removal from the land;
 - (c) Being unaware of the defecation (whether by reason of not being in the vicinity or otherwise), or not having a device for or other suitable means of removing the faeces shall not be a reasonable excuse for failing to remove the faeces
 - (d) “an authorised officer of the Authority” means an employee, partner agency or contractor of Newcastle-under-Lyme Borough Council who is authorised in writing by

Newcastle-under-Lyme Borough Council for the purposes of giving directions under the Order.

(e) Each of the following is a "prescribed charity" -

- Dogs for the Disabled (registered charity number 700454)
- Support Dogs Limited (registered charity number 1088281)
- Canine Partners for Independence (registered charity number (803680)
- Dog A.I.D (Registered Charity Number 1124533)
- Medical Detection Dogs (Registered Charity 1124533)

Restrictions and Penalty

- i) The Council is satisfied that the conditions set out in Sections 59, 64 and 72 of the Act have been satisfied and that it is in all the circumstances expedient to make this Order for the purposes of prohibiting the above activities. The effect or likely effect of this is, or is likely to be, of a persistent or continuing nature, such as to make this unreasonable, and justifies the restrictions imposed by this Order.
- ii) It is an offence for a person without reasonable excuse to engage in activity which is prohibited by this Order.
- iii) No person shall:
 - a. obstruct any authorised officer in the proper execution of their duties;
 - b. obstruct any other person carrying out an act which is necessary to the proper execution of any contract associated with this order;
- iv) A person found to be in breach of this Order shall be liable on summary conviction to a maximum penalty of level 3 on the standard scale or a Fixed Penalty Notice of £100.

By resolution of the Borough Council of Newcastle-under-Lyme dated 16th November 2023

The Common Seal of the
Borough of Newcastle-under-Lyme
hereunto affixed this....day of2023
in the presence of

Councillor

Authorised Signatory

SCHEDULE 1 (Dogs on Leads)

This order applies to all:

- Borough Council Crematorium, churchyards and cemeteries, and closed church yards
- Formal gardens
- Gated / enclosed public parks with wildlife pool
- Marked out sports pitches
- Unfenced children's play equipment and a portion of the surrounding area, extending 20 metres in all directions from it.
- Fenced / enclosed portions of Apedale Country Park which are designated for wildlife conservation
- The northern portion of Bathpool Park, from its entrance and car park at Boathorse Road, along the main access path which runs from the car park at Boathorse Road, adjacent to the children's play area - and rugby pitches to its junction with footpath 146 which crosses the dam wall.
- Paths which adjoin Bathpool Reservoir Main Fishing Pool and continues on along the eastern side of Bathpool reservoir.
- Public Rights of Way: Kidsgrove 130 to the reservoir embankment 144, 146 & 182
- Fishing Pools managed by angling clubs as per their signs
- Open space owned by parish and town councils as per their signs

SCHEDULE 2 (Dog Exclusions)

This order applies to:

- Fenced or enclosed children's play areas which are designated and marked for children's play
- Fenced or enclosed games areas, such as. tennis and ball courts, multisport areas, skate parks
- The grassed portion of all bowling greens
- Fenced or enclosed portions of Apedale Country Park which are designated for wildlife conservation
- Fenced or enclosed portions of Silverdale Country Park which are designated for wildlife conservation
- Fishing Pools managed by angling clubs as per their signs
- Open space owned by parish and town councils – as per their signs.

SCHEDULE 3 (Maximum Six Dogs)

- This order applies to: Apedale Country Park, Bateswood Country Park, Bathpool Park, Clough Hall Park, Silverdale Country Park, Lyme Valley Parkway, Birchenwood Country Park

Explanatory Note

Further information in respect of this order is published at www.newcastle-staffs.gov.uk/dogcontrols

DRAFT



PSPO Consultation, July to August 2023

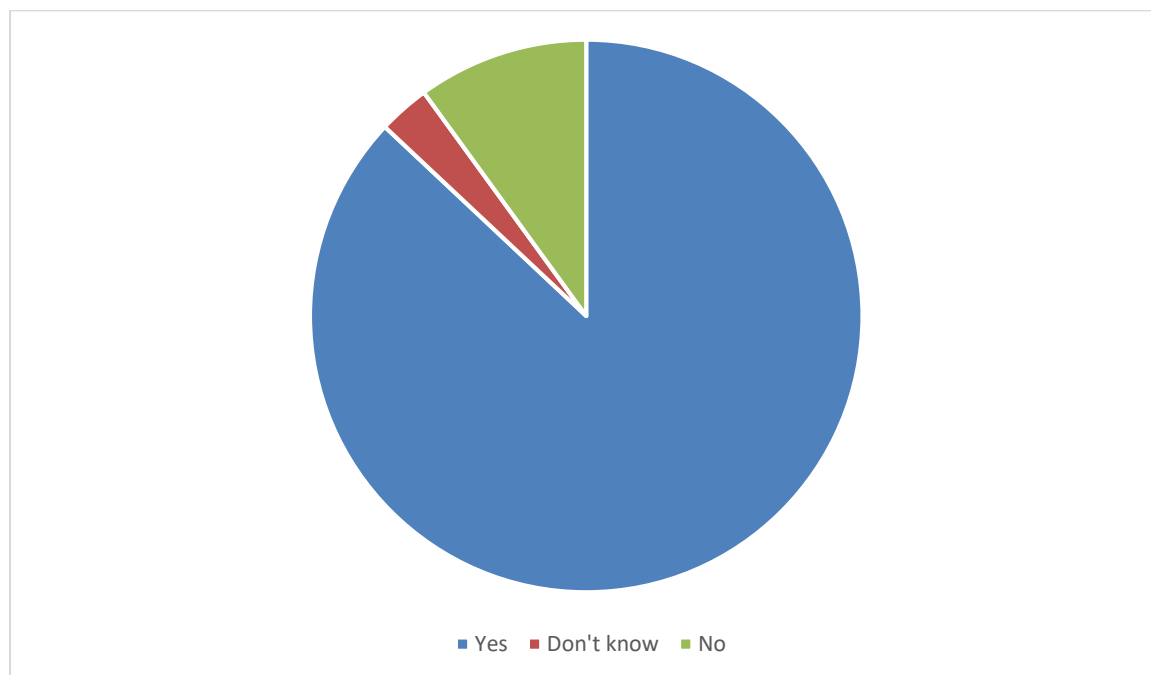
Headline findings

- 39 responses in July and August
- Support for all the proposals
- Highest support for
 - Requiring a person in charge of a dog to clean up if their dog fouls in a public place
 - Keeping dogs on leads in
 - Crematoria, cemeteries and churchyards
 - Unfenced children's play areas
- Lowest support for
 - Requiring dogs to be kept on leads in open spaces owned by town/parish councils
 - Excluding dogs from open spaces owned by parish/town councils
- 92 per cent in favour of restricting owners to six dogs in each mentioned location
- 56 per cent agreed that dogs should be kept on a lead on marked-out sports pitches
- Two-thirds of respondents were aged 51+.

Analysis

We would like to know if you would support the following proposal: The prohibition of any person having an open alcohol container in their possession. Any individual who has an open alcohol container in their possession will need to surrender this when required to do so by an Authorised Officer of the Council or Staffordshire Police.

A clear majority (87 per cent) were in support of this proposal. Ten per cent disagreed, with the remaining three per cent undecided.



Note that, in the following tables, totals might not add up to exactly 100 per cent due to rounding.

Question 1) "We would like to know if you agree with the following dog fouling controls...."

There was at least 67 per cent support for each of these proposals.

The most popular proposals were to continue to require a person in charge of a dog to clean up after it, and to continue to require dogs to be kept on a lead in the crematorium, churchyards etc and unfenced children's play equipment.

The least popular proposals were to keep dogs on leads in open space owned by parish/town councils and in parts of Bathpool Park.

Table 1: Proportions who agreed or otherwise with dog fouling controls

| | Agree | Don't know | Disagree |
|--|-------|------------|----------|
| Continue to require a person in charge of a dog to clean up its faeces if their dog fouls in any public place. | 100% | 0% | 0% |
| Q2) Continue to require a dog to be on the lead at... | | | |
| Borough Council Crematorium, churchyards and cemeteries, and closed churchyards | 95% | 3% | 3% |
| Formal gardens (such as Queens Gardens, Queen Elizabeth Park) | 87% | 3% | 10% |

| | | | |
|--|-----|-----|-----|
| Unfenced children's play equipment and a portion of the surrounding area, extending 20 metres in all directions from it. | 95% | 3% | 3% |
| Fenced / enclosed portions of Apedale Country Park which are designated for wildlife conservation | 80% | 5% | 15% |
| Parts of Bathpool park from the car park, across the reservoir dam, and along the side of the reservoir next to the railway line | 68% | 13% | 18% |
| Fishing Pools managed by angling clubs as per their signs | 74% | 8% | 18% |
| Open space owned by parish and town councils as per their signs | 67% | 13% | 21% |

Again, at least two-thirds were in support of all the proposals: 92 per cent agreed with keeping dogs excluded from the grassed portion of all bowling greens, with 67 per cent agreeing to keep them out of open space owned by parish and town councils.

Table 2: Proportion who agree with the following statements.

| Do you agree that we should..... | | | |
|--|-------|------------|----------|
| | Agree | Don't know | Disagree |
| Continue to require owners to place their dog(s) on a lead(s) when directed | 92% | 8% | 0% |
| Q3) Do you agree that we should continue to require dogs to be excluded from: | | | |
| Fenced or enclosed children's play areas which are designated and marked for children's play | 82% | 5% | 13% |
| Fenced or enclosed games areas, such as tennis and ball courts, multisport areas, skate parks | 90% | 3% | 8% |
| The grassed portion of all bowling greens | 92% | 3% | 5% |
| Fenced or enclosed portions of Apedale Country Park which are designated for wildlife conservation | 84% | 8% | 8% |
| Fishing Pools managed by angling clubs as per their signs | 80% | 10% | 10% |
| Open space owned by parish and town councils – as per their signs | 67% | 18% | 15% |

For the following question, asking about setting a maximum of six dogs per person, the results were identical across the parks, with 35 out of 38 respondents (92 per cent) in agreement on each one.

Table 3: Proportion who agree with the following:

| Q4) Do you agree that we should continue to set a maximum that no more than six dogs can be taken by any one person, into the following locations: | | | |
|---|--------------|-------------------|-----------------|
| | Agree | Don't know | Disagree |
| Apedale Country Park | 92% | 3% | 5% |
| Bateswood Country Park | 92% | 3% | 5% |
| Bathpool Park | 92% | 3% | 5% |
| Clough Hall Park | 92% | 3% | 5% |
| Silverdale Community Park | 92% | 3% | 5% |
| Lyme Valley Parkway | 92% | 3% | 5% |
| Birchenwood Country Park | 92% | 3% | 5% |

When it comes to marked-out sports pitches, would you prefer a requirement to....

A little over half (56 per cent) were most in favour of keeping dogs on a lead. Around one-quarter (28 per cent) preferred dogs to be excluded, with the remaining 15 per cent saying they were in favour of neither.

| | |
|---------------------|-----|
| Keep dogs on a lead | 56% |
| Exclude dogs | 28% |
| Neither | 15% |

Are there any additional controls you think are required, or any other locations where specific controls need to be set - if so please tell us here....(note that these comments have been included exactly as they were submitted)

- Dogs should be BANNED from farm land when cows, sheep etc are pregnant and where there are young. It has been clearly stated by Farmers that Dog Faeces causes abortion and deformity. Dogs should be BANNED from any area where children play.
- Please make it illegal to tie up a dog outside a shop/supermarket... Pet thieves take only seconds to snatch
- Disagree with allowing six dogs on a lead to be walked by one person. Dogs should be excluded from all football pitches marked or not.
- Silverdale Country Park fenced off nature reserves to exclude dogs similar to Apedale nature reserves.
- Missed locations include: MUGA at Riley's Field Wood Lane Audley Millennium Green, Leddys Field, Scot Hay play area - would be helpful if these could be enforced by regular patrols so people understand they have some status rather than just signs (and also publicity to show they are enforced in rural not just urban parts)
- Dogs on leads at all times in all areas of Apedale Country Park; there are far too many people who allow their dogs to roam freely whilst under no control whatsoever. They let their out of control dogs run up to other dogs who are on a lead & also jump up people. Dogs off leads in the wooded areas are a nuisance, sometimes aggressive & unnerving for other dogs & people. There are far too many dog walking

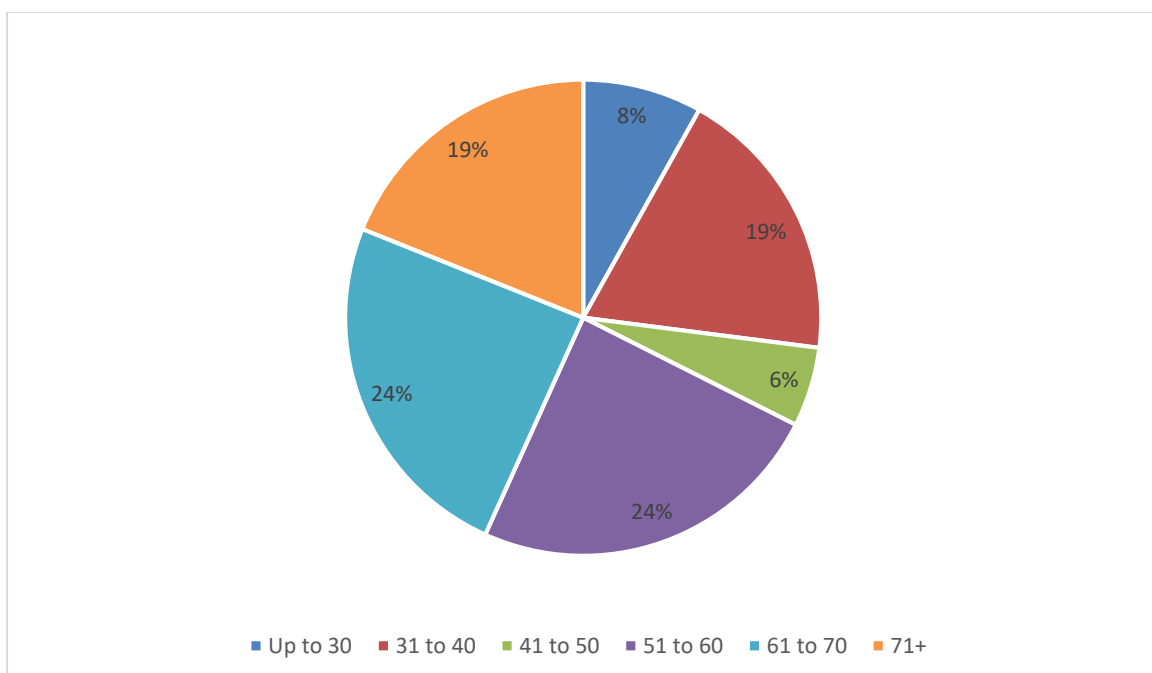
businesses using Apedale Country Park & also the land between Cheviot Place, Knutton, around Deep Pond pool, the field & 'concrete road' next to Apedale Country Park. These dog walking businesses are a menace, lots of dogs off lead, out of control, intimidating, dog poo not picked up, filled poo bags left lying around, wild fowl chased, frightened & killed. Six dogs is far too many, the maximum number needs to be reduced. Also, these dog walking businesses totally disrespect the country park, surrounding areas and should be charged for using the place as their own. The playing field on Loomer Road (opposite the former Speedway) also needs stricter controls as so many dogs on there are not kept under strict control. I regularly see dogs without collars/harnesses being walked on public footpaths by owners who don't even carry a lead. A more frequent police or dog warden presence around Loomer Road, Brutus Road, Forum Road, Horatius Road might catch these frequent law breakers. Great Row woods (between Apedale Heritage Centre & Loomer Road playing field) needs more specific controls as there are so many inconsiderate owners who allow their dogs to roam freely in there & refuse to put them on a lead - that's if they even have one. It used to be a really quiet, safe place to walk but since the Ranger (who's now left Apedale Country Park) opened up the fence by the picnic table on the grass verge by the main entrance road into the country park, far too many people now get into Great Row...it is totally ruined & has spoilt the habitat for all the wildlife in there.

- Due to the alarming increase of inconsiderate dog owners who wilfully refuse to place their dog on a lead when another dog is approaching all dogs should be on a lead at all times in and around the Apedale country park.
- As long as owners clean up themselves then no issue with dogs around sports pitches
- No problem but only when games are not being played
- Dogs should be able to run free, but also depends on the type and nature of the dog
- No problem with dogs on leads around sports areas
- No
- Dogs on lead at designated picnic areas - dogs running loose are a pain when enjoying an outdoor picnic, jumping on the tables and pinching food.
- Dogs should be on leads in areas e.g across fields where children have no choice but to walk through to access a playground.
- No more than three dogs should be taken by any one person into any public space. It is difficult to see why numbers should be restricted only in the larger parks etc.
- I have noticed that on the draft PSPO list, you state that dogs should be excluded from Newcastle Cemetery, Lymewood Road, whereas as the Yes/No questions above, you imply that dogs on leads are acceptable - this is not clear. Dogs on leads have always been allowed into Newcastle Cemetery and I do not see why this should change as there have been no reported issues and dog owners often take dogs into the Cemetery as they have walked there through the 3 Parks and to be a comfort when visiting deceased relatives, especially when the deceased person was close to the dog in question.
- Please do not therefore exclude dogs on leads from Newcastle Cemetery as there is no need to.
- Thanks
- In the proposal I have seen the intention to exclude dogs from cemeteries, however I do not see that proposal presented here to express my views, so how can this be a proper consultation? Dogs should be on leads in cemeteries but should not be excluded, why should they be? Many people like to take their dogs with them when visiting family graves so I oppose this proposal. Dogs should not be excluded as many people visit relatives' graves with their dogs, however they should be on leads, along with current proposals.

- In a borough where many parks (including those used by children) are infested by the consumption of alcohol and illegal intoxicants as well as more serious issues such as arson and vandalism (the potentially lovely Icky Picky being just one example), the presence of dog walkers and other nonthreatening footfall gives a sense of security to parents as well as to those just enjoying the outdoors. With levels of litter high throughout the borough, it does seem unfair to target dog owners alone (though not all scoop up the poop!). New means of enforcing dog fouling laws as well as of encouraging dog walkers to do the right thing are definitely called for but exclusionary measures are not the answer. And I speak as someone who has never owned a dog.
- The six dog rule is ridiculous where are you going to exercises your dogs you talk about increasing public health taking your dog for a walk is excellent exercise. These places are paid for by all the tax payer including dog owners they should always have equal rights to access these places they fund with local and national taxes. You are destroying the community you are destroying family walks put people health at risk by this totally backwards plan i do not support this section fenced if playing areas are fine but open park land no families and dog owners walk their dogs and meet others the physical and mental health benefits out way any other negative. Stop being backwards council need to stop controlling peoples live and get on with the real work on road repair social housing and building communities instead of destroying communities
- I would be interested to understand why it is being considered to not allow dogs on leads in the cemeteries, what harm are they doing? In addition when people visit graves they may want to take a dog with them, I understand they should be on leads so don't understand the reasoning behind this. It would also be good to understand how these rules will be enforced. There are people sleeping rough in Newcastle cemetery and Lyme Valley and many other areas in Newcastle should they not be helped? Fly tipping happens all the time in the Lyme Brook, this includes supermarket trollies, should that not be rectified?

Age profile

There was a bias towards older respondents – just under one-third (32 per cent) were aged up to 50, with a little over two-thirds (68 per cent) aged 51 and above.



Further representation

Respondents were asked if they were representing an organisation or residents group and the following were submitted:

- Councillor Gill Williams
- Audley Parish Council
- Philip Doodie
- Fiskars

NEWCASTLE-UNDER-LYME BOROUGH

CORPORATE LEADERSHIP TEAM'S

REPORT TO

Licensing and Public Protection Committee
24 October 2023

Report Title: Clean Air Act 1993 – Consultation on the revocation of existing smoke control areas and declaration of a new Borough wide smoke control area

Submitted by: Service Director - Regulatory Services & Environmental Protection Team Manager

Portfolios: Sustainable Environment

Ward(s) affected: All

Purpose of the Report

To ask committee to approve the proposed consultation on the revocation of existing smoke control areas and declaration of a new single Borough wide smoke control area.

Recommendation

That :-

1. The making of the Newcastle-under-Lyme Borough Smoke Control (Revocation) Order 2023 is approved and that this be published for formal consultation. (As detailed in Appendix 2).
2. The whole of the administrative area of the Borough of Newcastle under Lyme a single smoke control area is approved through the making of The Newcastle-under-Lyme Borough Smoke Control Order 2023 and that this be published for formal consultation. (As detailed in Appendix 2).
3. The Formal Fixed Penalty Charging policy for Smoke Control Offences is approved (Appendix 3).
4. A further report is received for consideration, following closure of the relevant consultation periods, for consideration of any representations concerning either the Newcastle-under-Lyme Smoke Control (Revocation) Order 2023 or The Newcastle-under-Lyme Borough (Whole Borough) Smoke Control Order 2023.

Reasons

To comply with statutory requirements and in recognition of the expectations of the Council detailed within the “DEFRA Air quality strategy: framework for local authority delivery 2023¹”. To ensure that all residents of the Borough are safeguarded against harmful emissions of fine particulate matter (PM_{2.5}), by recognising that solid fuel fires are the single biggest source of PM_{2.5} pollution in the UK and that solid fuel burning within the Borough contributes significantly to levels of PM_{2.5} emissions and consequent exposure. Given the known health implications of PM_{2.5} and in recognition of the UK Governments’ Revised National Air Quality Strategy 2023, that the whole of the administrative area of the Borough be declared a smoke control area. This is to include canal boats which are moored on the Trent and Mersey and Macclesfield Canals in the North of the Borough and the Shropshire Union Canal in the South of the Borough. To enable effective enforcement of smoke from chimneys in order to protect health.

1. **Background**

- 1.1 Air quality is the largest environmental health risk in the UK. It shortens lives and contributes to chronic illness. Health can be affected both by short-term, high-pollution episodes and by long-term exposure to lower levels of pollution.
- 1.2 In terms of costs to society recent research commissioned by Public Health England, found

¹ <https://www.gov.uk/government/publications/the-air-quality-strategy-for-england/air-quality-strategy-framework-for-local-authority-delivery>

“ that the health and social care costs of air pollution ($PM_{2.5}$ and NO_2) in England could reach £5.3 billion by 2035. This is a cumulative cost for diseases which have a strong association with air pollution: coronary heart disease; stroke; lung cancer; and childhood asthma. When diseases with weaker evidence of association are also added, including chronic obstructive pulmonary disease; diabetes, low birth weight, lung cancer, and dementia, the costs could reach £18.6 billion by 2035.

When all diseases are included, air pollution is expected to cause 2.4 million new cases of disease in England between now and 2035. $PM_{2.5}$ alone could be responsible for around 350,000 cases of coronary heart disease and 44,000 cases of lung cancer in England over that time. Even small changes can make a big difference, just a $1\mu g/m^3$ reduction in $PM_{2.5}$ concentrations this year could prevent 50,000 new cases of coronary heart disease and 9,000 new cases of asthma by 2035.”
(Source UK CLEAN AIR STRATEGY 2019 DEFRA, 2019).

- 1.3 The World Health Organisation, estimates that poor air quality within the UK costs the economy circa £54 billion which is equivalent to 3.7% of British GDP (based on 2010 data). It also accounts for 29,000 premature deaths annually. (Source: WHO Regional Office for Europe, OECD (2015). Economic cost of the health impact of air pollution in Europe: Clean air, health and wealth. Copenhagen: WHO Regional Office for Europe.
<http://www.euro.who.int/en/mediacentre/events/events/2015/04/ehp-mid-term-review/publications/economic-cost-of-the-health-impact-of-air-pollution-in-europe>)
- 1.4 At the local level, estimated costs of the health impacts of air pollution from ultra-fine particulate matter alone is thought to be between £20 - 47 million for Newcastle-under-Lyme and between £39 – 93 million for Stoke-on-Trent. Costs to the NHS and Social Care are thought to be between £96 – 176 thousand for Newcastle-under-Lyme and between £189 – 349 thousand for Stoke-on-Trent. (Source: https://fingertips.phe.org.uk/documents/PHE_Air_Pollution_Setup.exe)
- 1.5 In terms of deaths, between 4 and 5 % of adult deaths in Newcastle under Lyme can be attributed to fine particulate matter. Between 2010 to 2019, the percentage attributable deaths have tracked those for England but have been slightly below during this period see **Figure 1**.

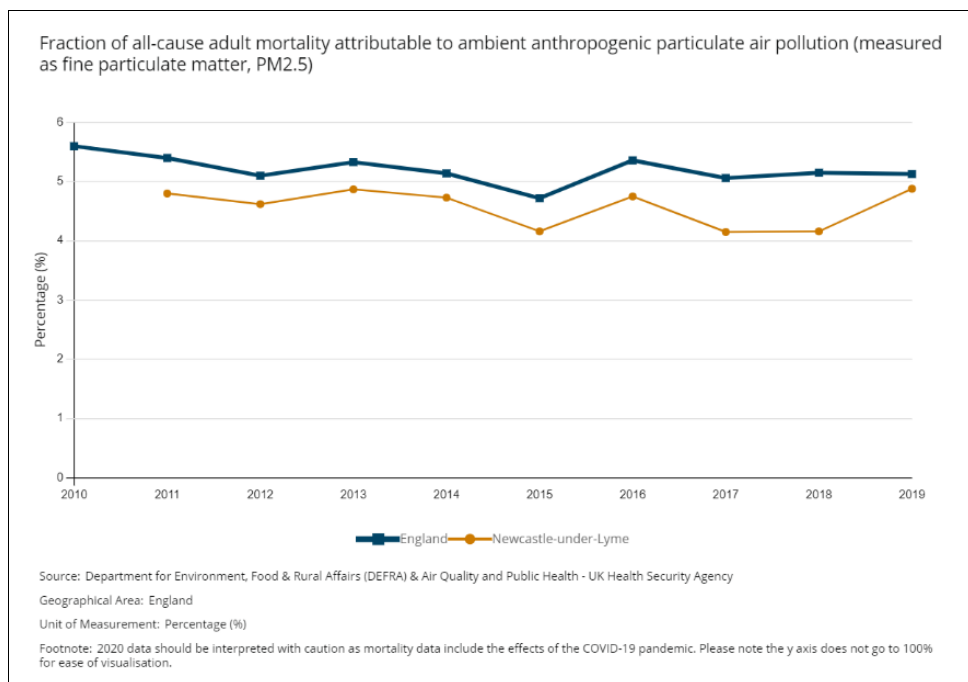


Figure 1. Fraction of all-cause adult mortality attributable to ambient anthropogenic particulate air pollution (measured as fine particulate matter, $PM_{2.5}$ Newcastle under Lyme and England 2010 to 2019 (Source: <https://sdgdata.gov.uk/3-9-1/>)

- 1.6 For adults aged 30+ within Newcastle under Lyme, data from the Public Health Outcomes Indicator Framework, estimates in the region of between 70 and 90 deaths annually can be attributable to $PM_{2.5}$ during the three year period 2018 to 2020, see **Figure 2**

| District/County | 2018 | | | 2019 | | | 2020 | | |
|-------------------------|---------------------------------|-----|-------------------------------|---------------------------------|-----|-------------------------------|---------------------------------|-----|-------------------------------|
| | Deaths - all causes persons 30+ | %* | Estimated attributable deaths | Deaths - all causes persons 30+ | %* | Estimated attributable deaths | Deaths - all causes persons 30+ | %* | Estimated attributable deaths |
| Newcastle-under-Lyme | 1334 | 5.7 | 80 | 1282 | 6.8 | 90 | 1548 | 4.7 | 70 |
| Stafford | 1336 | 5.8 | 80 | 1315 | 6.8 | 90 | 1565 | 4.5 | 70 |
| East Staffordshire | 1093 | 6.3 | 70 | 1128 | 7.3 | 80 | 1355 | 5.1 | 70 |
| South Staffordshire | 1211 | 6.3 | 80 | 1212 | 7.0 | 90 | 1418 | 4.9 | 70 |
| Lichfield | 1087 | 6.4 | 70 | 1093 | 7.2 | 80 | 1272 | 5.2 | 70 |
| Staffordshire Moorlands | 1108 | 5.2 | 60 | 1080 | 6.6 | 70 | 1276 | 4.5 | 60 |
| Cannock Chase | 976 | 6.4 | 60 | 908 | 7.2 | 70 | 1046 | 5.1 | 50 |
| Tamworth | 653 | 6.9 | 50 | 678 | 7.7 | 50 | 752 | 5.6 | 40 |
| Stoke on Trent | 2746 | 6.1 | 170 | 2490 | 7.2 | 180 | 3034 | 5.0 | 150 |
| Staffordshire | 8798 | 6.1 | 530 | 8692 | 7.0 | 610 | 10227 | 4.9 | 500 |

Figure 2. - Public Health Outcomes Indicator Framework D01: Fraction of mortality attributable to air pollution PM_{2.5} (Source www.fingertips.phe.org.uk)

- 1.7 Burning wood and coal in open fires and stoves makes up 38% of the UK's primary emissions of fine particulate matter (PM_{2.5}). Solid fuels are by far the most polluting method of domestic heating, and wood burning has increased in popularity over recent years. Reasons for burning wood and other solid fuels vary, and include aesthetic as well as practical, ecological or economic reasons.
- 1.8 For air pollution emissions, there is substantial difference between the different open fire and stove designs (Figure 3), the age of the appliance and how well maintained it is, and the moisture content of the wood, for those who want to burn wood. In urban areas, burning wood has the potential to adversely impact local air quality.

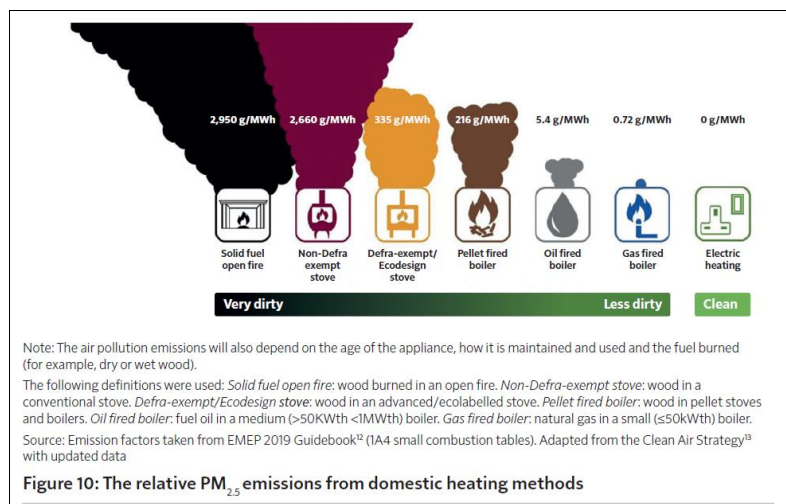


Figure 3 - The relative PM_{2.5} emissions from domestic heating methods.

- 1.9 Local authorities therefore have an important role in bringing about improvements in air quality and ensuring compliance with statutory requirements to reduce the impact on health and associated costs to the National Health Service and the wider economy.

2. Issues

2.1 Current Smoke control arrangements within the Borough

2.2 Smoke control orders were originally introduced by the Clean Air Act 1956 following the high number of deaths that had occurred during the London smog episode. These were subsequently replaced by the Clean Air Act 1993, local authorities can make orders so as to identify and designate land as a smoke control area, meaning that restrictions then apply to all premises within that area (unless specifically exempted in the order) to prevent smoke being emitted from chimney's.

2.3 Between 1956 and 1994, there have been 40 smoke control areas declared in the Newcastle-under-Lyme Borough Council administrative area. A map showing the approximate location of

the smoke control boundaries can be found at Appendix 1 whilst a list of smoke control areas currently in operation within the Borough can be found in Appendix 2.

- 2.4 In a current smoke control area, it is an offence to: allow smoke emissions from the chimney of a building; obtain and use solid fuel other than controlled fuel; and sell by delivering solid fuel other than authorised fuel to premises located within the Smoke Control Area.
- 2.5 Exemptions to the orders do apply, for example authorised fuels (such as anthracite, coke and coalite, and other 'smokeless fuels') can be used within smoke control areas because they burn either without causing smoke or that which contains less harmful pollutants. In addition, 'approved appliances', such as ovens, wood burners and stoves, as specifically listed in regulations, can be used in Smoke Control areas as they have passed tests to confirm that they are capable of burning an unauthorised or inherently smoky solid fuel without emitting harmful smoke. It should be noted that authorised appliances can only be used for the fuel for which they are designed. Unauthorised fuel, such as logs or coal, cannot be burnt in an open fireplace within a smoke control area.
- 2.6 Until recently unauthorised fuels could be bought and sold within a smoke control area because the seller or buyer could reason that it would be used outside the smoke control area or will be burnt in an exempt appliance. From 1 May 2021 it became an offence to sell an unauthorised fuel for domestic use under The Air Quality (Domestic Solid Fuels Standards) (England) Regulations 2020. For example, it is now an offence for any person to supply a solid fuel including wood (unless it has a moisture content of less than 20%). It is also now an offence for any person to supply any manufactured solid fuel that has not been authorised and classified as an exempt fuel. For Newcastle under Lyme, these regulations are enforced by Staffordshire Trading Standards.

2.7 Smoke Control Areas for the 21st Century

- 2.8 With a resurgence in the popularity of 'real fires' there are a number of solid fuel burning stoves in the market that comply with the legislation, and many already in use across the Borough are likely to be compliant. However, Regulatory Services have noted an increase in the number of complaints and enquiries relating to smoke from domestic chimneys and wood burning in recent years, more so recently given the current high costs of gas and electricity and associated increased costs of living. There is also growing public awareness surrounding the impact and harm caused by burning solid fuels and a desire to improve local air quality.
- 2.9 Your officers are currently unable to enforce the requirements in a large number of smoke control areas, as a number of the original orders have become outdated.
- 2.10 Furthermore, smoke control orders have not kept pace with the development of large areas of the Borough for housing and industrial use, such that there are significant numbers of the Borough's population whose health is not currently protected by smoke control legislation.
- 2.11 Where emissions from chimney smoke serving a building cannot be regulated, the only power which remains is to serve an abatement notice under Part III of the Environmental Protection Act 1990 where the smoke constitutes an actionable statutory smoke nuisance. Such complaints can be time consuming to investigate and difficult to establish as a statutory nuisance.
- 2.12 A new consolidated smoke control order would address these difficulties and enable officers to effectively regulate chimney smoke emissions and support efforts to safeguard health through improvements in air quality. It will be necessary to revoke the existing smoke control area orders through a revocation order and to put in place a new smoke control area order. The process for these is governed by Schedule 1 of the Clean Air Act 1993 and statutory guidance.
- 2.13 Smoke from garden bonfires, garden incinerators and burning in the open air is not covered by the subject of this report. There is separate legislation which may be used depending on the circumstances of the complaint and evidence obtained.

2.14 Fixed Penalty Notices for smoke control area offences

- 2.15 In respect of enforcement, the recent amendments introduced into the Clean Air Act 1993 now provide for a fixed penalty notice (FPN), of between £175 and £300 to be served on the individuals responsible for the emission of smoke from a chimney.

- 2.16 Before a FPN can be served for a smoke control area offence, the individual must be served with a “notice of intent” which details the offence, the intended amount of the fixed penalty and the mechanism for making a representation on specified grounds to the Council against the proposed penalty.
- 2.17 Representations must be made within 28 days and must be determined and a written outcome provided within 56 calendar days of the representation being received.
- 2.18 Once a FPN is served, there is a right of appeal within 28 days to the General Regulatory Chamber of the First Tier Tribunal.
- 2.19 Where a FPN remains unpaid, it would be recoverable as a Civil Debt via the County Court as per section 1A of the Clean Air Act 1993. The Council’s approved Debt Recovery Policy details the recovery procedure to be followed in such circumstances.
- 2.20 The Council is also required to have a policy in place concerning the issuing of FPN’s for smoke control offences. This is produced in Appendix 3.

3. **Proposal**

- 3.1 That Committee approves the making of the Newcastle-under-Lyme Borough Smoke Control (Revocation) Order 2023 and that this be published for formal consultation. (As detailed in Appendix 2).
- 3.2 That Committee approves the whole of the administrative area of the Borough of Newcastle under Lyme a single smoke control area through the making of the Newcastle-under-Lyme Borough (Whole Borough) Smoke Control Order 2023 and that this be published this for formal consultation. (As detailed in Appendix 2).
- 3.3 That committee receives a further report for consideration, following closure of the relevant consultation periods, for consideration of any representations concerning either the Newcastle-under-Lyme Smoke Control (Revocation) Order 2023 or The Newcastle-under-Lyme Borough (Whole Borough) Smoke Control Order 2023.
- 3.4 That Committee approve the “Formal Fixed Penalty Charging Policy for smoke control offences” be brought to committee for consideration (Appendix 3).

4. **Reasons for Proposed Solution**

- 4.1 To ensure that all residents of the Borough are safeguarded against harmful emissions of fine particulate matter (PM_{2.5}), and in recognition that solid fuel fires are the single biggest source of PM_{2.5} pollution in the UK and that solid fuel burning within the Borough contributes significantly to levels of PM_{2.5} emissions. At a national and international level, PM_{2.5} is considered a particularly harmful pollutant with regard to human health. These tiny particles are able to travel deep into the respiratory tract leading to numerous health conditions including asthma, lung cancer, cardiovascular disease, dementia and pregnancy loss. PM_{2.5} levels within the Borough also contributes to a significant number of adult resident’s deaths.
- 4.2 Given the known health implications of PM_{2.5} and in recognition of the UK Governments’ Air Quality Strategy, that the whole of the administrative area of the Borough be declared a smoke control area. This is to include canal boats which are moored on the Trent and Mersey and Macclesfield Canals in the North of the Borough and the Shropshire Union Canal in the South of the Borough.
- 4.3 To enable effective enforcement of smoke from chimneys in order to protect health.

5. **Options Considered**

- 5.1 To maintain the existing status quo with regards to existing smoke control areas. For the reasons stated there are difficulties in enforcing current requirements and this would not reflect scientific understanding of the negative impact of smoke emissions and associated fine particulates on health.
- 5.2 To revoke the existing smoke control orders and to replace these with an updated order covering urban areas. This excludes significant areas of the Borough where development has

taken place over time and areas of the Borough which have been identified for future development in the [Emerging Local Plan Consultation](#).

- 5.3 To revoke the existing smoke control orders and to replace these with a single Borough wide smoke control order. This is your officers preferred option and recommendation and recognises current evidence on the significance of chimney smoke emissions on health.

6. **Legal and Statutory Implications**

- 6.1 The Clean Air Act 1993 (as amended) alongside associated guidance from DEFRA provides mechanisms to put in place modernised smoke control and provides a means of enforcement.
- 6.2 There are prescribed processes in statutory guidance and legislation which govern the revocation, modification and declaration of smoke control area orders. Officers have taken account of recent statutory guidance on smoke control areas produced by DEFRA in bringing this report to committee (See background papers). This includes advertisement and consultation arrangements.
- 6.3 Public bodies including local Authorities may be subject to legal action for breach of a person's human rights, specifically Article 2 Right to Life and Article 8: Respect for your private and family life.
- 6.4 The recommendations included in this report and the work being undertaken to improve air quality across the Borough are in line with legal requirements.

Fixed Penalty Notices

- 6.5 The defence of any appeals against the service of a Fixed Penalty Notice will likely need assistance from the Council's Legal Service in order to prepare and present the Council's case.

7. **Equality Impact Assessment**

- 7.1 An Equalities Impact Assessment relevance test has been carried out. The relevance test established that this policy does not present either a medium or high detrimental impact to any of the protected characteristic groups, and as such a full EQIA is not required.
- 7.2 Officers will seek to use current approved community engagement channels to seek views on the proposed smoke control area and will also engage with recognised representatives of the canal community to seek their views.
- 7.3 Officers are also fully aware that some occupiers of domestic properties may have real difficulties in affording smokeless fuels or Ready to Burn wood or using suitable cured wood. Where solid or liquid fuels are the only means of heating a home, householders may be eligible for grant aid from various energy efficiency schemes such as [ECO4](#), [ECO4 Flex](#) and the [Boiler Upgrade Scheme](#). We would seek to publicise such schemes and any assistance to access them as part of our engagement with owners and occupiers at an early stage of any investigation alongside publicity associated with the proposal in this report.

8. **Financial and Resource Implications**

- 8.1 The consultation exercise on the revocations and the proposed new smoke control area and its subsequent publicity and enforcement will be met from the existing service budget. DEFRA have also provided new burden funding to local authorities to assist with enforcement of smoke control provisions.

Canal Boats

- 8.2 For residential moorings of at least six months term which are in place at the time of the new smoke control area coming into force, the relevant Council is required to fund adaptations to enable suitable smokeless fuels to be burnt without emitting chimney smoke.
- 8.3 Discussions with the Canal and Rivers Trust has identified that there are no such residential moorings within Newcastle under Lyme at either Tyrley on the Shropshire Union Canal nor at Kildgrove on the Macclesfield Canal and the Trent & Mersey Canal which are for short stay use of up to 48 hours.

8.4 Signage will however be necessary to inform canal boaters that they are entering a smoke control area and DEFRA have suggested wording in their statutory guidance for inclusion that they must not emit smoke from chimneys of a moored vessel, along with the potential penalty for doing so. Emitting smoke from a chimney whilst underway or moving is exempt from the legal requirements.

8.5 There will be a need to erect signage at the Borough boundary of the canal network and at mooring places. The Canals and Rivers Trust have been approached regarding the costs for the provision and installation of this signage by them. It is anticipated that this can be funded from monies provided by DEFRA under the new burdens funding.

Private Dwellings

8.6 Grants to fund adaptations to enable compliance with new smoke control orders are no longer payable by local authorities.

9. Major Risks

9.1 A specific GRACE risk assessment has been prepared for this line of work. Those risks considered to be the most significant are identified below. Appropriate controls are in place to reduce these risks from being realised.

9.2 Failure to have adequate controls in place to enable the council to comply with its legal obligations under the Clean Air Act 1993 could result in formal intervention by the Government.

9.3 Public bodies including local Authorities may also be subject to legal action for breach of a person's human rights specifically Article 2 Right to Life and Article 8: Respect for your private and family life.

10. Council Plan 2022 to 2026 & UN Sustainable Development Goals (UNSDG)

10.1 The following areas of the Council Plan 2022 to 2026 are also contributed towards Priority 1 – One Council delivering for Local People & Priority 3 – Healthy, active and safe communities <https://www.newcastle-staffs.gov.uk/downloads/download/506/council-plan-2022-26>

10.2 The monitoring and assessment of local air quality, and the requirement for air quality management areas and associated air quality action plans contributes towards the following UN Sustainable Development Goals <https://sdgs.un.org/goals>



11. Key Decision Information

11.1 N/A

12. Earlier Cabinet/Committee Resolutions

12.1 The December 2022 Committee approved an officer led review of enforcement options for smoke control area and for a report to be brought to this committee with proposals.

13. List of Appendices

Appendix 1- Map of Current Smoke Control Areas within Newcastle under Lyme

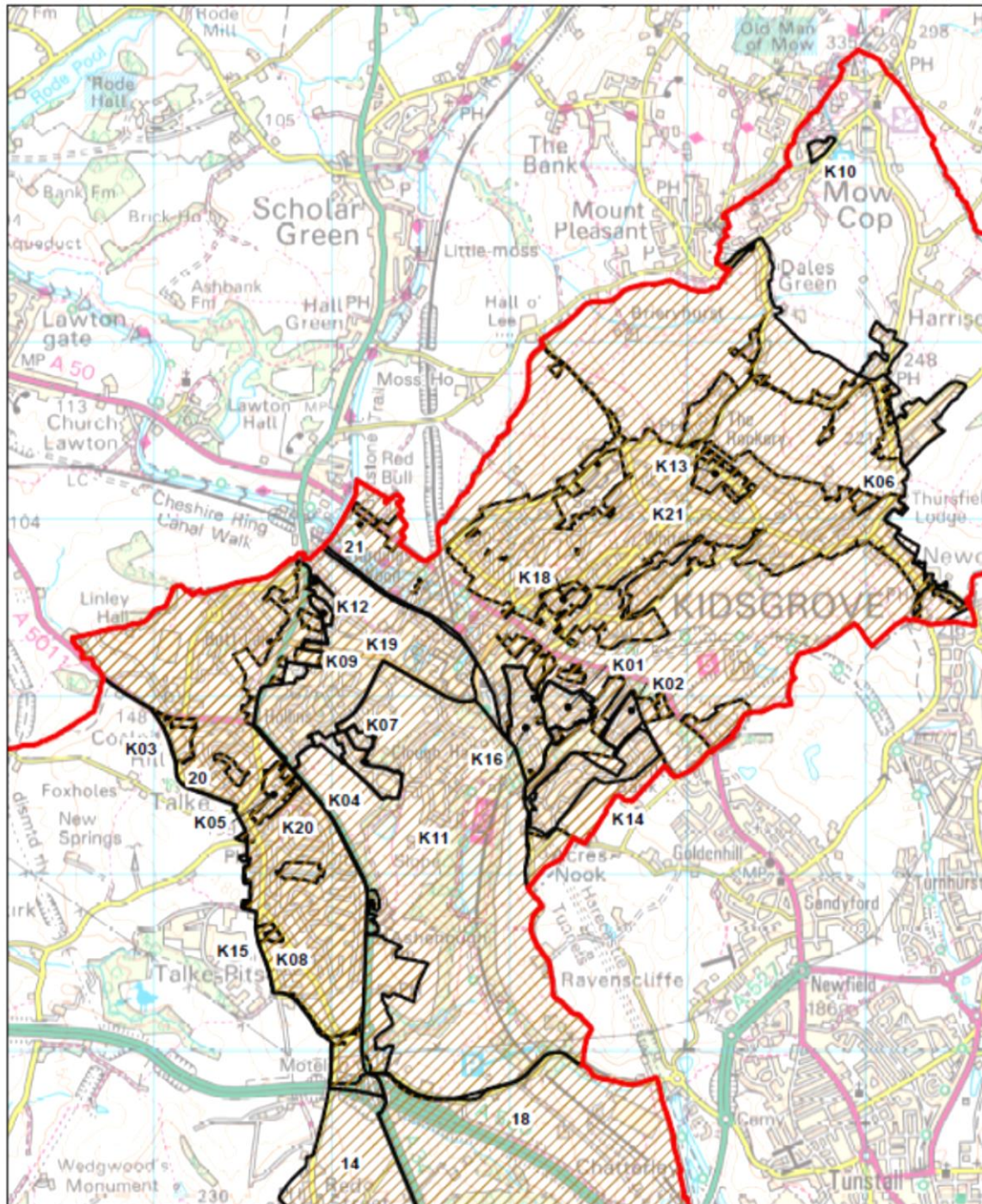
Appendix 2– Proposed smoke control area revocation order and smoke control area order

Appendix 3– Smoke Control – Fixed Penalty Notice Policy September 2023

14. **Background Papers**

- [Clean Air Act 1993 Part III](#)
- [Guidance on smoke control enforcement](#)
- [Air Quality Strategy for England 2023](#)
- [Air Quality strategy 2023 - framework-for-local-authority-delivery](#)

Smoke Control Areas

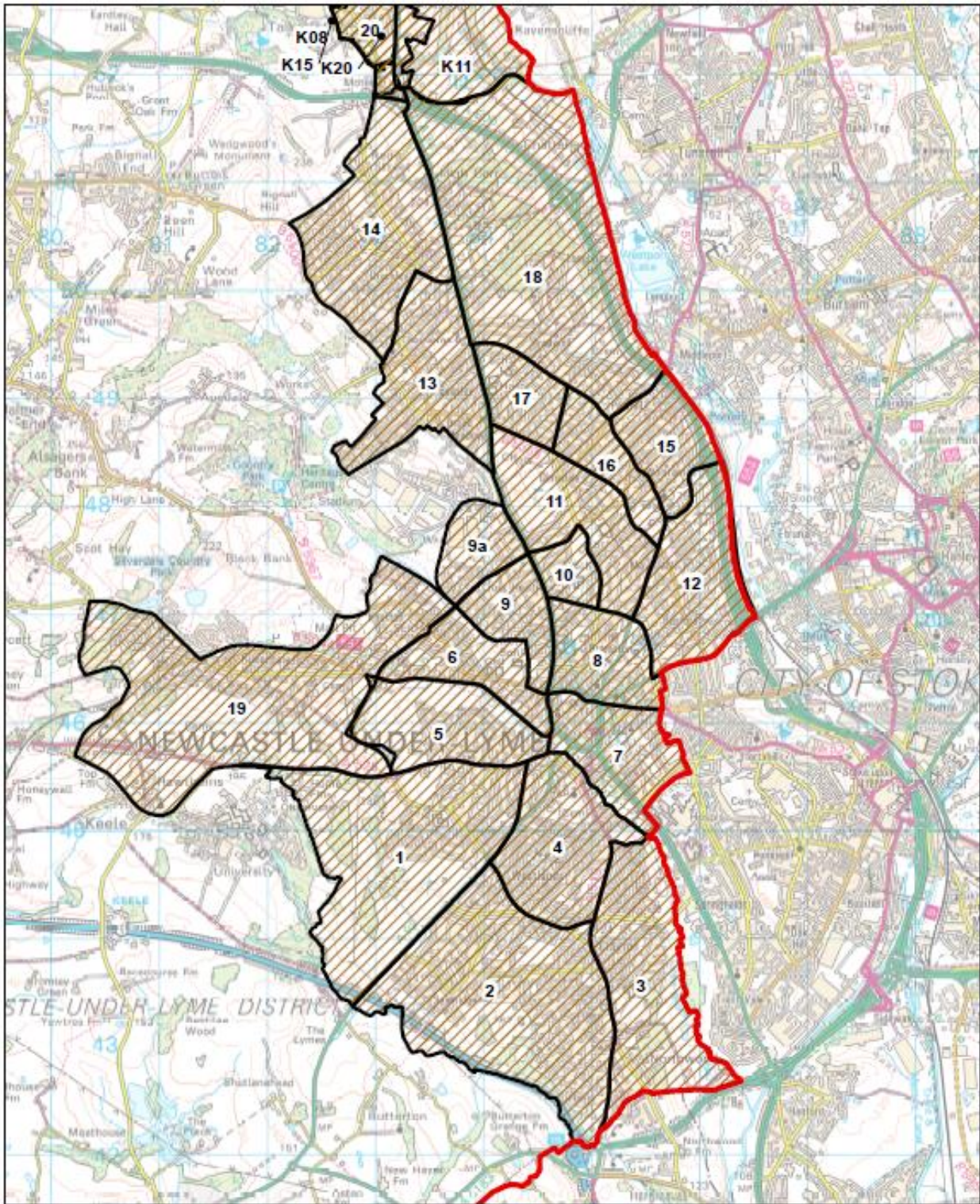


Legend



- Local Authority Boundary
- Smoke_Zone_edits

This map is reproduced from Ordnance Survey material with the permission of Her Majesty's Stationery Office. Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to civil proceedings. Newcastle Under Lyme Borough Council - 100019654 - 2022.

Smoke Control Areas



Legend

-  Local Authority Boundary
-  Smoke_Zone_edits

This map is reproduced from Ordnance Survey material with the permission of Her Majesty's Stationery Office. Crown Copyright. Unauthorized reproduction infringes Crown Copyright and may lead to civil proceedings. Newcastle Under Lyme Borough Council - 100019654 - 2022.

Appendix 2 - Proposed smoke control area revocation order and smoke control area order



Clean Air Act 1993 – Part III Newcastle-under-Lyme Smoke Control (Revocation) Order 2023 & The Newcastle-under-Lyme Borough Council (Whole Borough) Smoke Control Order 2023

Notice is hereby given that the Borough Council of Newcastle under Lyme (the Council), in the exercise of its powers under Part III of the Clean Air Act 1993 (the Act), as amended:

(a) on the xxxxx day of 2023, made an Order entitled, "the Borough of Newcastle under Lyme Smoke Control Orders (Revocation) Order 2023" (the Revocation Order);

And

(b) on the xxxxx day of 2023, made an Order entitled, "The Newcastle under Lyme Borough Smoke Control Order 2023" (the Proposed Smoke Control Order) declaring that the whole of the administrative area of the Council shall be a smoke control area for the purposes of the Act, subject to consideration by the Council of any objections, which are not withdrawn.

1. The effect of the **Newcastle-under-Lyme Smoke Control (Revocation) Order 2023** is to revoke all existing smoke control orders in operation in the administrative area of the Council set out in the Schedule 1, subject to confirmation by the Secretary of State.

If confirmed, it will remove all smoke controls for those parts of the Council's administrative area previously declared smoke control areas. If the Revocation Order is confirmed, with or without modification, it will not come into operation any earlier than six months from the date of confirmation.

2. The effect of **The Newcastle-under-Lyme Borough Council (Whole Borough) Smoke Control Order 2023**, if made, would declare the whole of the administrative area of the Council to be a smoke control area as set out in the Schedule 2, subject to confirmation by the Secretary of State.

The effect of this would be that if, on any day after the order comes into operation: -smoke is emitted from a chimney of any building or vessel moored within the administrative area of the Council, the occupier of that building, or moored vessel, is liable a civil financial penalty of up to £300, subject to any objection on the grounds specified by Section 19A of, and Schedule 1A to the Act;

3. any person who: -
 - a. acquires any controlled solid fuel for use in a building or fireplace, other than an approved fireplace at the time of acquisition;
 - b. offers controlled solid fuel for sale by retail where the fuel is to be taken away by the purchaser;
 - c. fails to take reasonable steps to notify potential purchasers that it is an offence to acquire controlled solid fuel for any of the uses in 2.a. above;
 - d. sells any controlled solid fuel by retail for delivery to a building;

covered by the Proposed Order will be guilty of a criminal offence and liable on summary conviction to level 3 fine on the standard scale (currently £1,000) for the offences under 2.a., or an unlimited fine for the other offences in 2.b.-d., subject to the statutory defence set out in Section 19B(6) of the Act in the case of a 2.d. offence. (Note: An "approved fireplace" means a fireplace of a type specified in a list published by the Secretary of State "controlled solid fuel" means any solid fuel other than an approved fuel. approved fuel" means a solid fuel specified in a list published by the Secretary of State.)

If the Proposed Order is made, it will come into operation on the date specified in the order being not less than six months after it is made, or such later date as the Council may specify.

Copies of the Revocation Order and the Proposed Order may be inspected free of charge at Newcastle under Lyme Borough Council, Castle House, Barracks Road, Newcastle under Lyme. ST5 2BL at all reasonable times during the period of six weeks from xxxx. Alternatively, either may be viewed on the Council's Website www.newcastle-staffs.gov.uk/smoke_control_order_consultation Within that period any person who will be affected by the Revocation Order, or the Proposed Order, may object by notice in writing as follows:

- Objections to the proposed Revocation Order must be sent to the Secretary of State at: -Air Quality and Industrial Emissions, DEFRA Seacole Building, 2 Marsham Street, London SW1P 4DF or by email to Air.Quality@defra.gov.uk
- Objections to the making of the Proposed Order must be sent to: - Regulatory Services, Environmental Protection Team, Newcastle-under-Lyme Borough Council, Castle House, Newcastle under Lyme. ST5 2BL or by email to environmental_health@newcastle-staffs.gov.uk

Signed _____
Martin Hamilton

Chief Executive Date_____

This order also contains the following:-

- Schedule 1 – Smoke Control Orders to be revoked
- Schedule 2 – Map of area to be included within a Smoke Control Order

Schedule 1 – Smoke Control Orders to be Revoked via the Newcastle-under-Lyme Smoke Control (Revocation) Order 2023



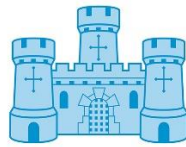
NEWCASTLE-UNDER-LYME
BOROUGH COUNCIL

Newcastle under Lyme Borough Council Smoke Control Area Orders in force

| Order Name | Date Made | Effective from | Legislation | London Gazette Link |
|---|--------------------|---------------------------------------|---------------------------------------|---|
| The Westlands (No. 1) Newcastle-under-Lyme (Area No. 1) Smoke Control Order, 1960 | 14th June 1960 | six weeks from 29th July 1960 | Section 11 of the Clean Air Act, 1956 | https://www.thegazette.co.uk/London/issue/42105/page/5243 |
| The Westlands and Clayton Newcastle-under-Lyme (Area No. 2) Smoke Control Order, 1962 | 2nd April 1962 | six weeks from 17th day of April 1962 | Section 11 of the Clean Air Act, 1956 | https://www.thegazette.co.uk/London/issue/42651/page/3200 |
| The Westlands and Clayton Newcastle-under-Lyme (Area No. 3) Smoke Control Order, 1963 | 7th January 1963 | December 1st 1963 | Section 11 of the Clean Air Act, 1956 | https://www.thegazette.co.uk/London/issue/42901/page/723/data.pdf |
| The Westlands Newcastle-under-Lyme (Area No. 4) Smoke Control Order, 1964 | 20th March 1964 | 1st July 1965 | Section 11 of the Clean Air Act, 1956 | https://www.thegazette.co.uk/London/issue/43291/supplement/3018 |
| The Newcastle-under-Lyme (Area No. 5) Smoke Control Order, 1965 | 25th May 1965 | 1st July 1965 | Section 11 of the Clean Air Act, 1956 | https://www.thegazette.co.uk/London/issue/43677/page/5540 |
| The Knutton, Newcastle-under-Lyme (Area No. 6) Smoke Control Order, 1966 | 1st March 1966 | 1st July 1967 | Section 11 of the Clean Air Act, 1956 | https://www.thegazette.co.uk/London/issue/43924/page/2862 |
| The Newcastle-under-Lyme (Area No. 7) Smoke Control Order, 1967 | 16th August 1967 | 1st July 1968 | Section 11 of the Clean Air Act, 1956 | https://www.thegazette.co.uk/London/issue/44396/page/9507 |
| The Newcastle-under-Lyme (Area No. 8) Smoke Control Order, 1968 | 13th November 1968 | 1st September 1969 | Section 11 of the Clean Air Act, 1956 | https://www.thegazette.co.uk/London/issue/44719/page/12416 |
| The Newcastle-under-Lyme (Area No. 9) Smoke Control Order 1971 | 5th November 1971 | 1st December 1971 | Section 11 of the Clean Air Act, 1956 | https://www.thegazette.co.uk/London/issue/45524/page/12667 |
| The Newcastle-under-Lyme (Area No. 9) Smoke Control Order, 1971 | 5th November 1971 | 31st December 1973 | Section 11 of the Clean Air Act, 1956 | https://www.thegazette.co.uk/London/issue/45530/page/12942 |
| The Newcastle-under-Lyme (Area No. 9A) Smoke Control Order, 1975 | 23rd January 1975 | 6 weeks from the 7th February 1975 | Section 11 of the Clean Air Act, 1956 | https://www.thegazette.co.uk/London/issue/46486/page/1776 |
| The Newcastle-under-Lyme (Newcastle No. IQ Area) Smoke Control Order, 1977 | 11th November 1977 | 6 weeks from 28th November 1977 | Section 11 of the Clean Air Act, 1956 | https://www.thegazette.co.uk/London/issue/47383/supplement/14519 |
| The Newcastle-under-Lyme (Area No. 11) Smoke Control Order 1979 | 8th June 1979 | 6 weeks from 28th June 1979. | Section 11 of the Clean Air Act, 1956 | https://www.thegazette.co.uk/London/issue/47885/page/7803 |
| The Newcastle-Under-Lyme (Area No. 12) Smoke Control Order 1981 | 23rd July 1981 | 6 weeks from 3rd August 1981. | Section 11 of the Clean Air Act, 1956 | https://www.thegazette.co.uk/London/issue/48707/page/10466 |
| The Newcastle-under-Lyme (Area No. 13) Smoke Control Order 1983 | 17th January 1983 | 6 weeks from 31st January 1983. | Section 11 of the Clean Air Act, 1956 | https://www.thegazette.co.uk/London/issue/49243/page/983 |
| Newcastle-under-Lyme (Area No. 14) Smoke Control Order 1984 | 24th October 1984. | 1st April 1985 | Section 11 of the Clean Air Act, 1956 | https://www.thegazette.co.uk/London/issue/49906/page/14351 |
| The Newcastle-under-Lyme (Area No. 15) Smoke Control Order 1985 | 22nd October 1984 | 6 weeks from 9th November 1984 | Section 11 of the Clean Air Act, 1956 | https://www.thegazette.co.uk/London/issue/49916/page/14823 |
| The Newcastle under Lyme (Area No 16) Smoke Control order 1985 | 1st October 1985 | 6 weeks from 16th October 1985 | Section 11 of the Clean Air Act, 1956 | https://www.thegazette.co.uk/London/issue/50282/page/13970 |
| The Newcastle-under-Lyme (Area No. 17) Smoke Control Order 1987 | 13th October 1986 | 6 weeks from 23rd October 1986 | Section 11 of the Clean Air Act, 1956 | https://www.thegazette.co.uk/London/issue/50724/page/15022 |
| The Newcastle-wider-Lyme (Area No. 18) Smoke Control Order 1989 | 11th November 1988 | 6 weeks from 24th November 1988 | Section 11 of the Clean Air Act, 1956 | https://www.thegazette.co.uk/London/issue/51533/page/12895 |

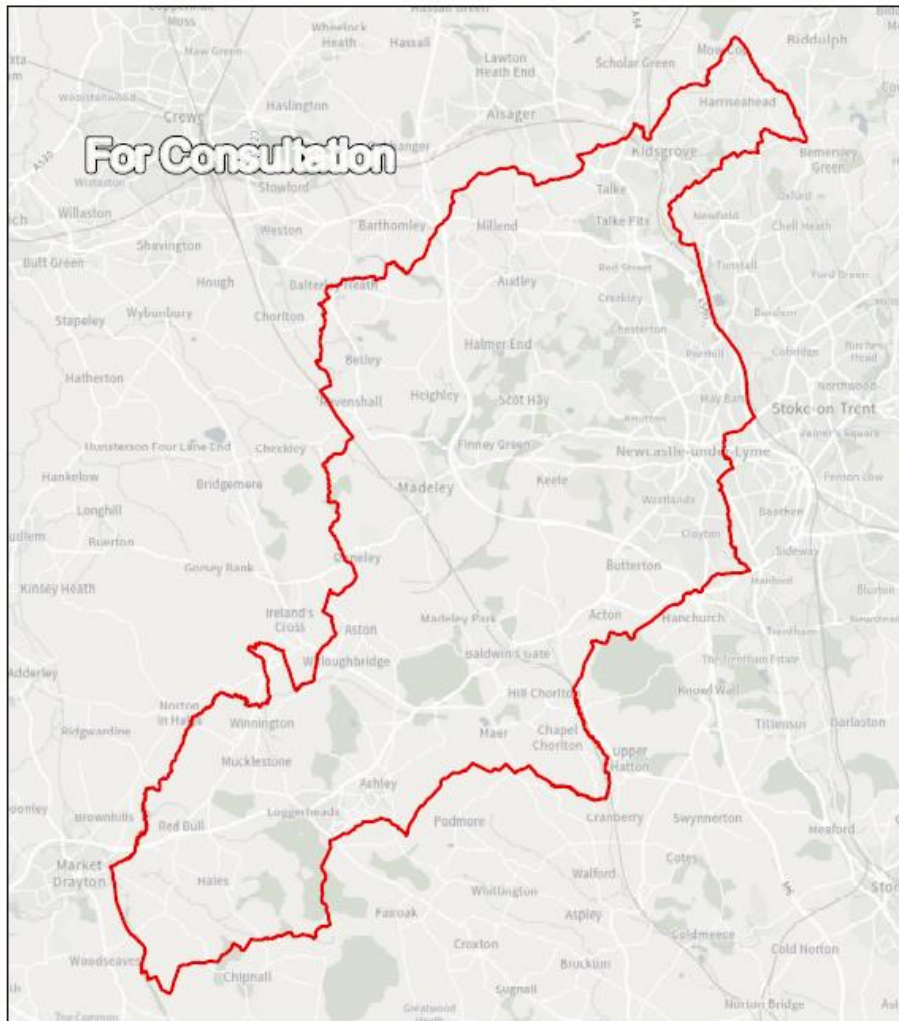
| | | | | |
|--|--------------------|-------------------------------------|---------------------------------------|---|
| The Newcastle-under-Lyme (Area No. 19) Smoke Control Order 1993 | 19th April 1993 | 6 weeks from 29th April 1993 | Section 11 of the Clean Air Act, 1956 | https://www.thegazette.co.uk/London/issue/53287/page/7390 |
| The Newcastle-under-Lyme (Kingsgrove Area No. 19) Smoke Control Order 1977 | 13th January 1978 | 6 weeks from the 2nd February 1978. | Section 11 of the Clean Air Act, 1956 | https://www.thegazette.co.uk/London/issue/47448/page/1032 |
| The Newcastle-under-Lyme (Area No. 19) Smoke Control Order 1992 | 22nd January 1992. | 6 weeks from 30th January 1992 | Section 11 of the Clean Air Act, 1956 | https://www.thegazette.co.uk/London/issue/52818/page/1475 |
| The Kingsgrove (Area No. 20) Smoke Control Order 1993 | 19th April 1993. | 6 weeks from 29th April 1993 | Section 11 of the Clean Air Act, 1956 | https://www.thegazette.co.uk/London/issue/53287/page/7389 |
| The Newcastle-under-Lyme (Kingsgrove Area No. 20) Smoke Control Order 1992 | 22nd January 1992. | 6 weeks from 30th January 1992. | Section 11 of the Clean Air Act, 1956 | https://www.thegazette.co.uk/London/issue/52818/page/1474 |
| The Kingsgrove (Area No. 21) Smoke Control Order 1994 | 18th April 1994 | 6 weeks from 27th April 1994 | Section 18 of the Clean Air Act, 1993 | https://www.thegazette.co.uk/London/issue/53655/page/6243 |

Schedule 2 –
 Area proposed to be included in the Newcastle under Lyme smoke control order 2023



NEWCASTLE·UNDER·LYME
BOROUGH COUNCIL

Clean Air Act 1993.
Newcastle under Lyme Number 1 Smoke Control Order
xxxxxxx 2023.



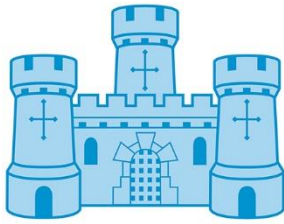
Proposed smoke control area delineated in red - this also applies to moored vessels on the canal network within the Borough



This map is reproduced from Ordnance Survey material with the permission of Her Majesty's Stationery Office. Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to civil proceedings. Newcastle Under Lyme Borough Council – 100019654 - 2023

Appendix 3 Newcastle under Lyme Borough Council - Smoke Control Order Fixed Penalty Policy

**Newcastle under Lyme Borough Council
Smoke Control Order Fixed Penalty Policy**



NEWCASTLE·UNDER·LYME
BOROUGH COUNCIL

Regulatory Services
Newcastle-under-Lyme Borough Council
Castle House
Barracks Road
Newcastle under Lyme
Staffordshire
ST5 2BL

Date: xxxx 2023

| | | |
|--------------------|-----------------------|---|
| Prepared by | Darren Walters | Regulatory Services Business Manager |
| Reviewed by | Nesta Barker | Service Director – Regulatory Services |

**Endorsed by the Council’s Public Protection Committee pursuant to minute number
xxxxx**

CONTENTS

| | | |
|---------------------|-----------------------------------|-------------------------------------|
| 1 | Introduction | 2 |
| 2 | Policy | 3 |
| 2.1 | Written Warning | 3 |
| 2.2 | Financial Penalty | 3 |
| 2.3 | Notice of Intent | 3 |
| 2.4 | Final Notice | Error! Bookmark not defined. |

Appendices

Note: The template correspondence appended to this policy does not form part of this policy and may be amended from time to time.

- A. Current smoke control areas
- B. Written warning letter template
- C. Financial penalty template

INTRODUCTION

The [Clean Air Act 1993](#) (as amended by the Environment Act 2021) provided local authorities with the legal means to control the emission of smoke from chimneys. There is a degree of flexibility in how each local authority can apply such controls. This policy draws on guidance issued to local authorities by DEFRA in May 2022²

Initially, the authority must declare a 'smoke control area' to define where the emission of smoke is to be controlled.

As of (date to be agreed) and pursuant to Public Protection Committee Resolution *** the areas detailed within Appendix A have been declared as smoke control areas. The actual smoke control order(s) are detailed within Appendix B and detail any premises exempt from smoke control legislation.**

The rules cover smoke emissions in a smoke control area from:

- a chimney of any building
 - a chimney for the furnace of any fixed boiler or industrial plant
 - moored vessels, for example canal boats, if these are included in the scope of a smoke control area
- A building means any structure with a roof and walls. This could include a summerhouse or shed.

Where smoke is emitted from the above within a smoke control area, the council has the discretionary power (Schedule 1A) to issue a financial penalty; this is a civil matter, rather than a criminal offence. Where the smoke also constitutes a statutory smoke nuisance, whether or not from a chimney in a smoke control area, the Council can also serve a nuisance abatement notice under the amended provisions of section 79(1)(g) of the Environmental Protection Act 1990.

When smoke is emitted from a chimney in a smoke control area, the local authority can issue a financial penalty to the person responsible.

A financial penalty can be issued to any of the following for smoke emissions in a smoke control area:

- the occupier of the building with the chimney – for example, the homeowner or the tenant
- the owner of the fixed boiler or industrial plant that the chimney serves
- the occupier of the moored vessel, if you've included these in your smoke control area

Government guidance is that each local authority should have a policy to set out how financial penalties are to be applied.

This document sets out how Newcastle-under-Lyme Borough Council will apply the provisions of the Clean Air Act 1993 in relation to smoke from chimneys, in respect of when financial penalties are to be issued and the scale of fees.

This policy follows the principles of the current adopted Corporate Enforcement Policy³

Smoke emitted otherwise than from a chimney of a building is not covered by this policy. This is likely to include bonfires, open air BBQ's, pizza ovens. Action may however be taken under other legislation where smoke is identified as a statutory nuisance or is considered to be associated with unreasonable conduct of a persistent or continuing nature.

Note: The template correspondence appended to this policy does not form part of this policy and may be amended from time to time.

² <https://www.gov.uk/government/publications/smoke-control-area-enforcement-local-authorities-in-england>

³ <https://www.newcastle-staffs.gov.uk/directory-record/28/environmental-health-enforcement-policy>

POLICY

WRITTEN WARNING

The current guidance issued by DEFRA is that a local authority may issue a written warning (also known as an improvement notice).

The enforcement policy provides for the issue of informal advice where there is a minor breach of the law.

Within this context, the council will issue a written warning for a first offence, where it is appropriate in the circumstances to do so.

The council will provide a 7 day grace period against further enforcement following the first warning, to allow the responsible person a reasonable period to address the issue.

FINANCIAL PENALTY

Where it is appropriate to do so, the council will issue a financial penalty under Schedule 1A. The financial penalty ranges from a minimum of £175 to a maximum of £300, to be set as part of council policy.

The financial penalty should consider the seriousness of the offence, and whether it is a repeat offence.

Where a financial penalty is issued for the first time, it shall be £175.

Second and subsequent financial penalties shall be £300.

The council will allow a one week grace period between the issue of financial penalties, to ensure that the responsible person receives correspondence from the council before further offences are enforced.

NOTICE OF INTENT

Where it is intended to issue a financial penalty in accordance with this policy, the council is required to issue a notice of intent.

The notice of intent provides the recipient of the proposed financial penalty with 28 days to object the council's decision. The grounds of objection are:

- a) there was no smoke emitted from the chimney at the time given in the notice of intent.
- b) a smoke control order did not apply to the chimney at the time given in the notice of intent.
- c) the person sent the notice of intent was not responsible for the chimney at the time given in the notice of intent - in which case, they must provide the name and address of the person who was liable at the time (if they know).
- d) there are other compelling reasons why the financial penalty should not be imposed.
- e) (for moored vessels) the smoke emission was from the engine and was used to move it or provide it with electric power.

The onus is on the appellant to provide evidence to support their objection.

An appeal may be made on the grounds of a 'compelling reason' and will be assessed on a case-by-case basis, but will not consider general pleas of poverty as appropriate grounds.

Where the council allows an objection, it will withdraw the notice and inform the appellant of its decision in writing.

FINANCIAL PENALTY

After consideration of an appeal to the Council, where the council considers it appropriate to issue a Financial Penalty this will be confirmed in writing within 56 days of the appeal being lodged. The Financial Penalty will also be issued at the same time

The recipient of a final notice has a 28 day right of appeal, which should be made to a First-Tier Tribunal. Rights of appeal are detailed on the Financial Penalty notice. The Council will abide by the decision of the First Tier Tribunal.

Non-payment of a Financial Penalty in full by the date stipulated will be treated as a Civil Debt. The council will pursue unpaid debts in line with the prevailing Debt Recovery Policy in order to maintain the integrity of its enforcement approach.

Written warning template – use for minor offences or complaints

Our ref: APP«refno» / CRM«laref»
Environmental Health Services

Your ref:

Date: «Aadate»

The Occupant(s)

«Paddress1»

«Paddress2»

«Paddress3»

«Paddress4»

«PADDRESS5»

Dear Occupant(s)

Clean Air Act 1993 – Part III and Schedule 1A.

Re: Emission of smoke from a chimney within a designated smoke control area from «Paddress»

WARNING

THE COUNCIL HAS RECEIVED COMPLAINTS ABOUT SMOKE FROM A CHIMNEY Should emissions of chimney smoke be evidenced, you may be liable for a Fixed Penalty Notice of up to £300 for each offence.

On the DATE / TIME

I, «AAOFFNAME», «AAOFFJOB» being a duly authorised officer for the purposes of the Clean Air Act 1993 identified smoke emitting from a chimney located at «Paddress» do hereby formally advise you that «Paddress» is located in a designated smoke control area and that it is an offence to emit smoke from any chimney.

Insert photo here if available

How to prevent a smoky chimney

To prevent this matter being taken further, I request that

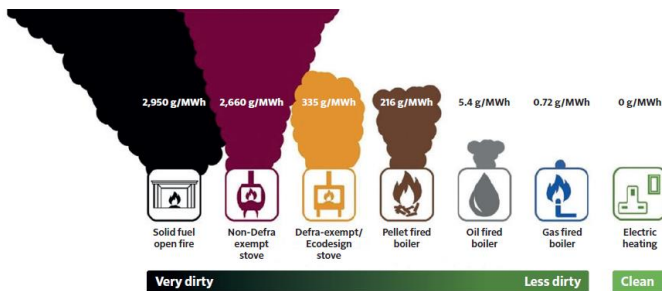
1. Cease emitting smoke from any chimney at this address
2. If you are burning on an open fire that only an authorised fuel is used or if using wood that you only burn wood which is branded as “Ready to Burn”. Details of authorised smokeless fuels can be found at <https://smokecontrol.defra.gov.uk/fuels.php?country=england>
3. If you wish to burn wood that this takes place in an “exempt appliance” operated in full accordance with the manufacturer’s instructions. Any wood should be checked to ensure it is properly seasoned, as excessive moisture can lead to smoke and also cause tar deposits on the flue. You can check the moisture content with a moisture meter which can be obtained from your fireplace installer, chimney sweep or online.

Details of exempt appliances and the rules that apply to the exemption can be found at <https://smokecontrol.defra.gov.uk/appliances.php?country=england>

Health Impacts from smoke

There is a substantial difference between the least and most polluting methods of domestic heating, as shown in this graphic

For air pollution emissions, there is a substantial difference between the different open fire and stove designs, the age of the appliance and how well maintained it is, and the moisture content of the wood, for those who want to burn wood. In urban areas, burning wood has the potential to worsen local air quality significantly.



Note: The air pollution emissions will also depend on the age of the appliance, how it is maintained and used and the fuel burned (for example, dry or wet wood).

The following definitions were used: *Solid fuel open fire*: wood burned in an open fire. *Non-Defra-exempt stove*: wood in a conventional stove. *Defra-exempt/Ecodesign stove*: wood in an advanced/ecolabelled stove. *Pellet fired boiler*: wood in pellet stoves and boilers. *Oil fired boiler*: fuel oil in a medium (>50KWth <1MWth) boiler. *Gas fired boiler*: natural gas in a small (≤50KWth) boiler.

Source: Emission factors taken from EMEP 2019 Guidebook¹³ (IA4 small combustion tables). Adapted from the Clean Air Strategy¹³ with updated data

Smoke emitting from chimneys where unsuitable fuels are burnt or where appliances are not operated in accordance with the manufacturer's instructions are significant producers of fine particulate matter which is harmful to health as shown in this graphic . This in turn places additional burdens on the NHS and the wider economy and has also been shown to shorten life expectancy.

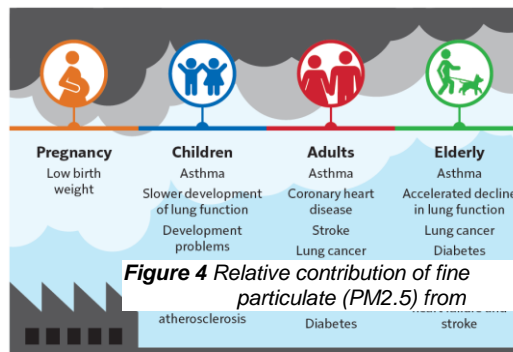
Accordingly, I now look forward to your co-operation in this matter.

Yours sincerely

«ioffname», «ioffjob»

Telephone: 01782 717717 [quoting APP«refno» / CRM«laref»]

Email: «ioffemail»



Source: Adapted from Public Health England (2018)

NOTICE OF INTENT

Our ref: APP«refno»
Environmental Health Services
Your ref:
Date: «Aadate»

«SERVED»
«Paddress1»
«Paddress2»
«Paddress3»
«Paddress4»
«PADDRESS5»

Dear «SERVED»

Clean Air Act 1993 – Part III and Schedule 1A.

NOTICE OF INTENT TO ISSUE A FINANCIAL PENALTY

Emission of smoke from a chimney within a designated smoke control area from «Paddress»

On the DATE / TIME

I, «AAOFFNAME», «AAOFFJOB» being a duly authorised officer for the purposes of the Clean Air Act 1993, identified smoke emitting from a chimney located at «Paddress» and do hereby formally advise you that «Paddress» is located in a designated smoke control area and that it is an offence to emit smoke from any chimney.

Insert photo here if available

I now intend to issue you with a Financial Penalty for £175 (First Offence) / £300 (second and subsequent offences) in relation to this matter.

Before doing so, I am required to advise that you may lodge a representation regarding the proposed Financial Penalty and the amount within 28 days of «Aadate»

You have 28 days to object the council's decision. The statutory grounds for representation are:

- a) there was no smoke emitted from the chimney at the time given in the notice of intent.
- b) a smoke control order did not apply to the chimney at the time given in the notice of intent.
- c) the person sent the notice of intent was not responsible for the chimney at the time given in the notice of intent - in which case, they must provide the name and address of the person who was liable at the time (if they know).
- d) there are other compelling reasons why the financial penalty should not be imposed.
- e) (for moored vessels) the smoke emission was from the engine and was used to move it or provide it with electric power.

The onus is on the appellant to provide evidence to support their objection.

An appeal be made on the grounds of a 'compelling reason' will be assessed on a case-by-case basis, but we will not consider general pleas of poverty as appropriate grounds.

Where the council allows an objection, it will withdraw the notice and inform the appellant of its decision in writing within 56 days of the representation being received by the Council

Representations shall be made in writing to:

**Service Director – Regulatory Services
Newcastle under Lyme Borough Council
Castle House
Barracks Road
Newcastle under Lyme
ST5 2BL**

or by email to

environmental_health@newcastle-staffs.gov.uk

Please include the following information, as without it, we are unable to consider your representation.

- 1) Notice reference «refno» - Representation against Notice of Intent to serve a Fixed Penalty Notice for Emission of smoke from a chimney within a designated smoke control area from «Paddress»
- 2) Your Full name(s)
- 3) Correspondence address (if different from the above)
- 4) Telephone Number(s)
- 5) Email address

Which of the following grounds you are making a representation and the supporting information which you wish to be taken into account.

- A. there was no smoke emitted from the chimney at the time given in the notice of intent.
- B. a smoke control order did not apply to the chimney at the time given in the notice of intent.
- C. the person sent the notice of intent was not responsible for the chimney at the time given in the notice of intent - in which case, they must provide the name and address of the person who was liable at the time (if they know).
- D. there are other compelling reasons why the financial penalty should not be imposed.
- E. (for moored vessels) the smoke emission was from the engine and was used to move it or provide it with electric power.

The onus is on the appellant to provide evidence to support their objection.

Representations will be acknowledged in writing.

You can expect to receive the Council's final decision within 56 days of receipt of your representation.

Yours sincerely

«ioffname», «ioffjob»

Telephone: 01782 717717 [quoting APP«refno» / CRM«laref»]

Email: «ioffemail»

ACKNOWLEDGEMENT OF REPRESENTATION MADE

Our ref: APP«refno»
Environmental Health Services

Your ref:

Date: «Aadate»

«SERVED»
«Paddress1»
«Paddress2»
«Paddress3»
«Paddress4»
«PADDRESS5»

Dear «SERVED»

Clean Air Act 1993 – Part III and Schedule 1A.

ACKNOWLEDGEMENT OF REPRESENTATION AGAINST NOTICE OF INTENT TO ISSUE A FIXED PENALTY NOTICE FOR

Emission of smoke from a chimney within a designated smoke control area from «Paddress» witnessed on the on the DATE / TIME

I acknowledge receipt of your written representation dated xxxxx concerning the above which was received by the Council on the xxxxx

You will receive the Council's decision on this matter within 56 days of the date your representation was received by the Council.

«ioffname», «ioffjob»

Telephone: 01782 717717 [quoting APP«refno» / CRM«laref»]

Email: «ioffemail»

REPRESENTATION OUTCOME

Our ref: APP«refno»
Environmental Health Services

Your ref:

Date: «Aadate»

«SERVED»
«Paddress1»
«Paddress2»
«Paddress3»
«Paddress4»
«PADDRESS5»

Dear

Clean Air Act 1993 – Part III and Schedule 1A.

OUTCOME OF REPRESENTATION AGAINST NOTICE OF INTENT TO ISSUE A FINANCIAL PENALTY FOR

Emission of smoke from a chimney within a designated smoke control area from «Paddress» witnessed on the on the DATE / TIME

Further to the representation made by yourself concerning the above matter.

Your grounds for representation have been considered alongside the information you have provided.

On this occasion, the Council will not be issuing a Financial Penalty in respect of the above matter and this matter has now been closed.

OR

Having considered this matter further, the Council will now be issuing a Financial Penalty Notice for the sum of £175 / £300 / other amount specify, in relation to the emission of smoke from a chimney within a designated smoke control area from «Paddress» witnessed on the on the DATE / TIME.

You are advised to take notice of the information FIXED PENALTY NOTICE once received and to arrange prompt payment.

«ioffname», «ioffjob»

Telephone: 01782 717717 [quoting APP«refno» / CRM«laref»]

Email: «ioffemail»

FINANCIAL PENALTY NOTICE

CLEAN AIR ACT 1993 - SCHEDULE 1A Penalty for emission of smoke in smoke control area in England

Name «SERVED»
Of: «nadaddr1»
«nadaddr2»
«nadaddr3»
«nadaddr4»
«nadaddr5»

Particulars of Offence

I, «**aoffname**», «**offjob**», an authorised officer of Newcastle-under-Lyme Borough Council have reason to believe that on #####, time ##### at «nadaddr1» «nadaddr2» «nadaddr3» «nadaddr4» you committed the offence of **emitting smoke from a chimney within a designated smoke control area** contrary to the provisions of **Clean Air Act 1993 - Schedule 1a**

IMPORTANT

You are required to pay a FINANCIAL PENALTY of £175 / £300 (other amount as determined on appeal) within 28 days of this notice. (see notes on reverse for details of how to pay).

If after 28 days this has not been paid in full, this matter will be considered a Civil Debt for which Debt Recovery action will be taken.

This may result in additional charges and may also affect your credit history and ability to obtain credit in the future.

Authorised Officer «Aoffname»

Signature _____ Date «svdate»

Your right of Appeal

8(1) A person on whom a financial penalty is imposed by a final notice may, within the period of 28 days beginning with the day after that on which the notice was given, appeal against the notice to the First-tier Tribunal General Regulatory Chamber

General Regulatory Chamber
HM Courts & Tribunals Service
PO Box 9300
Leicester
LE1 8DJ
Telephone: 0300 123 4504

<https://www.gov.uk/guidance/environmental-fines-or-notices-appeal-against-a-regulator>

- (2) The grounds for an appeal under this paragraph are that the decision to impose the financial penalty was—
- based on an error of fact,
 - wrong in law, or
 - unreasonable.
- (3) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.
- (4) On an appeal under this paragraph the First-tier Tribunal may—
- quash the final notice,
 - confirm the final notice,
 - vary the final notice by reducing the amount of the financial penalty, or
 - remit to the local authority the decision whether to—
 - withdraw or confirm the final notice, or
 - vary the final notice by reducing the amount of the financial penalty.

This slip must accompany your payment if paying by post.
FPN Ref: D9«notice number»

To: Newcastle-under-Lyme Borough Council (Regulatory Services –Sundry Debtors), Castle House, Barracks Road, Newcastle, Staffordshire. ST5 1BL

I enclose with this letter the amount of £_____

Signature_____Date_____

Name (BLOCK LETTERS)_____

Address (BLOCK LETTERS) _____

EMAIL_____

PHONE NUMBER_____

Please make cheques payable to Newcastle-under-Lyme Borough Council.

Alternatively, you can pay by credit or debit card:

Credit card / Debit Card

Card number_____

Start Date (if applicable)_____

Issue no. (debit card only)_____

Signature of cardholder_____

Expiry Date_____

HOW TO PAY

BY PERSONAL VISIT TO CUSTOMER SERVICES AT:

- (a) Castle House, Barracks Road, Newcastle-under-Lyme, ST5 1BL
- (b) Kidsgrove Customer Service Centre, Town Hall, Kidsgrove. ST7 4EL

Monday to Friday - 9.00am to 5.00pm

Payments may be made by cheque, debit or credit card

BY POST:

Newcastle-under-Lyme Borough Council, Castle House, Barracks Road, Newcastle, Staffordshire. ST5 1BL

Cheques and Postal Orders should be crossed and made payable to: - Newcastle-under-Lyme Borough Council

Please remember to include your payment slip.

BY TELEPHONE:

Payment may be made by debit or credit card by telephoning 01782 717717.

Please give your **FPN Ref: D9«notice number»**

THIS DEMAND WILL NOT BE CONSIDERED PAID UNTIL THE FULL REMITTANCE IS ACTUALLY RECEIVED BY THE COUNCIL.

NON PAYMENT WILL RESULT IN CIVIL DEBT RECOVERY ACTION BEING TAKEN VIA THE COUNTY COURT

POST-DATED OR THIRD PARTY CHEQUES WILL NOT BE ACCEPTED IN SETTLEMENT.



NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

CORPORATE LEADERSHIP TEAM'S REPORT TO

Licensing and Public Protection Committee
24 October 2023

Report Title: PRIVATE HIRE & HACKNEY CARRIAGE FEES & CHARGES 2024/2025

Submitted by: Service Director - Regulatory Services & Licensing Administration Team Manager

Portfolios: Finance, Town Centre & Growth

Ward(s) affected: All

Purpose of the Report

To request the Public Protection Committee to consider the proposed taxi and private hire fees prior to consultation, as referred to in the report.

Recommendation

- a) That the Public Protection Committee considers the proposed fees.
- b) That the proposed fees be sent out for consultation.
- c) That following consultation a further report is brought to Committee.

Reasons

Decisions relating to the setting of non-statutory fees and charges for taxi licensing have been delegated from Council to Public Protection Committee.

1. **Background**

- 1.1 The approval of certain fees and charges relating to the licensing of Private Hire and Hackney Carriage licensing regimes are Council functions
- 1.2 Council at their meeting on 22nd February 2017 delegated this function to Public Protection Committee.

2. **Issues**

- 2.1 Section 70 of the Local Government (Miscellaneous Provisions) Act 1976 states the local authority may charge fees for Operator and Vehicle licence fees and that if it is proposing to vary the fees then it must publish a notice in at least one local newspaper. The notice must provide for a consultation period, not less than 28 days from first publication to allow for objections to be made. This notice must also be displayed at the Council offices.
- 2.2 Section 53(2) of the Local Government (Miscellaneous Provisions) Act 1976 states the local authority may charge fees for Driver licence fees. Consultation is not required by

legislation but is considered good practice to consult alongside any changes to Operator and Vehicle licence fees.

- 2.3 The Deregulation Act 2015 amended the Local Government (Miscellaneous Provisions) Act 1976 in relation to the duration of licences for hackney carriage and private hire drivers and private hire operators.

Section 10, subsection 2 of the Deregulation Act 2015 changed the law in such a way as to establish a standard duration of three years for hackney carriage and private hire driver licences. The section specifies that a licence may be granted for a period of less than three year but only in circumstances of an individual case, not because of a blanket policy.

Subsection 3 of the Act changed the law in such a way as to establish a standard duration of five years for a private hire vehicle operator licence. The section specifies that a licence may be granted for a period of less than five years but only in the circumstances of an individual case, not because of blanket policy.

- 2.4 The European Services Directive states (Art 12.2):

“Authorisation procedures and formalities shall not be dissuasive and shall not unduly complicate or delay the provision of the service. They shall be easily accessible and any charges which the applicants may incur from their application shall be reasonable and proportionate to the cost of the authorisation procedures in question and shall not exceed the cost of the procedures”

The Directive includes specific requirements that apply to the charging of fees. Charges must be reasonable and proportionate to the cost of the processes associated with a licensing scheme. Councils must not use fees covered by the Directive to make a profit or act as an economic deterrent to deter certain business types from operating within an area.

- 2.5 In December 2019 the Court of Appeal in the case “*R (on the application of Abdul Rehman, on behalf of the Wakefield District hackney Carriage and Private Hire Association) v The Council of the City of Wakefield and The Local Government Association (Intervening) [2019] EWCA Civ 2166*” confirmed that there is no general principle that the taxi licensing fee regime should be self-financing and that the costs associated to enforcing the behaviour of licensed drivers could be recovered via the licence fee set under s53(2) LGMPA76. The judgement stated (para 46):

“In any event, we consider that the costs of enforcing the behaviour of licensed drivers can be recovered through the driver’s licence fee under section 53(2). The relevant words in that provision are “the costs of issue and administration”. The costs of “administration” must be something other than, and in addition to, the costs of “issue”. There is no difficulty in interpreting “administration” in its statutory context as extending to administration of the licence after it has been issued. It naturally includes the costs of suspension and revocation, which are events expressly mentioned in Part II of the 1976 Act. Suspension and revocation rest on non-compliance with the requirements and conditions for continuing to hold the licence. As we have said, it would therefore have been obvious to Parliament, when enacting the 1976 Act, that costs would be incurred by the district council in monitoring compliance with such requirements and conditions.”

3. Proposal

3.1 In March 2023 the Committee determined to agree the proposed fees for 2023-24 following public consultation. The Licensing Department have undergone the annual review and fee setting methodology to propose fees for 2024-25. The table at 3.2 shows:

Column a – The licence/process the fee is for;
 Column b – The current fee structure;
 Column c – The proposed fees for 2024-25; and
 Column d – the percentage difference between columns b (current) and d (proposed).

3.2 The proposed fees and charges for 2024-25 are:

| a | b | c | d |
|--|------------------------|---------------------------------|----------|
| Private Hire/Hackney Carriage (subject to consultation) | Fee/Charge 2023-24 (£) | Proposed Fee/Charge 2024-25 (£) | % Change |
| <u>OPERATORS</u> | | | |
| PHO Application fee | £289.00 | £329.00 | 12 |
| Add/Remove Director | £44.00 | £45.00 | 2 |
| Copy/Replacement Licence | £8.00 | £8.00 | 0 |
| Basic DBS | £18.00 (set by DBS) | £18.00 | 0 |
| <u>DRIVERS</u> | | | |
| Dual Driver Badge - 3 years | £275.00 | £250.00 | -9 |
| Change of address | £18.00 | £18.00 | 0 |
| Replacement badge | £15.00 | £15.00 | 0 |
| Replacement vehicle badge | £15.00 | £15.00 | 0 |
| Reissue/replacement badge (with amended details) | £31.00 | £31.00 | 0 |
| DBS (CRB check) | £38.00 (set by DBS) | £38.00 | 0 |
| DBS (CRB check) online | £64.34 | £64.34 | 0 |
| Exemption certificates | £15.00 | £15.00 | 0 |
| Knowledge test | £20.00 | £20.00 | 0 |
| Fail to attend Knowledge Test | £20.00 | £20.00 | 0 |
| Change of Name | £21.00 | £21.00 | 0 |
| Replacement vehicle badge holder | £6.00 | £6.00 | 0 |
| DE Training replacement cert | £0.00 | £0.00 | 0 |
| Copy of Paper Licence | £8.00 | £8.00 | 0 |
| Disability & Safeguarding Training | £40+VAT | £40+VAT | 0 |
| <u>VEHICLES</u> | | | |
| Transfer of vehicle | £44.00 | £45.00 | 2 |
| Change of vehicle registration | £50.00 | £52.00 | 4 |
| Failure to attend for vehicle test | £74.00 | £73.00 | -1 |
| Retest | £33.00 | £31.00 | -6 |

| | | | |
|-------------------------------------|---------------------|---------|-----|
| Replacement plate carrier – front | £10.00 | £11.00 | 10 |
| Replacement plate carrier – rear | £12.00 | £13.00 | 8 |
| Replacement vehicle plate - front | £9.00 | £9.00 | 0 |
| Replacement vehicle plate - rear | £11.00 | £12.00 | 9 |
| Replacement vehicle sticker signage | £6.00 | £6.00 | 0 |
| Copy of paper part of licence | £8.00 | £8.00 | 0 |
| Change of Vehicle Colour | £50.00 | £52.00 | 4 |
| HCV/PHV safety test | £79.00 | £79.00 | 0 |
| HCV application fee | £242.00 | £186.00 | -23 |
| PHV application fee | £238.00 | £173.00 | -27 |
| Basic DBS | £18.00 (set by DBS) | £18.00 | 0 |
| Change of Name/Address | £44.00 | £45.00 | 2 |
| Spot check | £22.00 | £23.00 | 5 |
| Replacement Internal Plate | £8.00 | £8.00 | 0 |

3.3 It is recommended that the fees are set in line with the provisions of the 1976 Act, the Local Government Association fee setting guidance, the Council's taxi licensing policy and the principles outlined in section 7.3 below.

3.4 The majority of fees have either remained the same with a 0% increase, have a small percentage increase due to similar costs being involved or higher percentages that reflect a small monetary increase on a low fee (e.g. Replacement plate carrier – front increasing from £10.00 to £11.00, a 10% increase). This is down to a balance of the increase in Council costs and efficiencies realised as part of the One Council project.

3.5 The Private Hire Operator fee has the largest percentage increase which is partially down to the increase in Council costs but also a change in procedure that identifies that a pre-application check on a proposed base and a greater level of compliance and enforcement than previously attributed.

3.6 The Dual Driver application and vehicle applications have received a significant decrease in proposed fees due to efficiencies realised as part of the One Council project, a reduction in licence holders and amendments to procedures and fee-setting for the compliance and enforcement elements of the regime.

4. **Reasons for Proposed Solution**

4.1 a) That the Public Protection Committee considers the proposed fees.

b) That the proposed fees be sent out for consultation.

c) That following consultation a further report is brought to Committee.

5. **Options Considered**

5.1 The Council is required to set fees for private hire and hackney carriage licenses for 2024/2025. The fees proposed are based on cost recovery.

6. Legal and Statutory Implications

6.1 The Local Government (Miscellaneous Provisions) Act 1976 contains the legal provisions and process relating to the setting of fees, this is detailed in sections 2.1-2.3 of this report.

7. Equality Impact Assessment

7.1 Not applicable

8. Financial and Resource Implications

8.1 The legislative background in relation to this report can be found in the Local Government (Miscellaneous Provisions) Act 1976, sections 53(2) and 70.

8.2 There will be financial implications for the Council if full cost recovery is not achieved.

8.3 The fees can be used to cover the cost of the following:

Administration – This could cover basic office administration to process the licence application, such as resources, photocopying, postage or the cost of handling fees through the accounts department. This could also include the costs of specialist licensing software to maintain an effective database, and printing licences.

Initial visit/s – This could cover the average cost of officer time if a premises visit is required as part of the authorisation process. Councils will need to consider whether the officer time includes travel. It would also be normal to include ‘on-costs’ in this calculation. Councils will need to consider whether ‘on-costs’ include travel costs and management time.

Third party costs – Some licensing processes will require third party input from experts.

Liaison with interested parties – Engaging with responsible authorities and other stakeholders will incur a cost in both time and resources.

Management costs – Councils may want to consider charging an average management fee where it is a standard process for the application to be reviewed by a management board or licensing committee. However, some councils will include management charges within the ‘on-costs’ attached to officer time referenced below.

Local democracy costs – Councils may want to recover any necessary expenditure in arranging committee meetings or hearings to consider applications.

On costs – including any recharges for payroll, accommodation, including heating and lighting, and supplies and services connected with the licensing functions. Finance teams should be able to provide a standardised cost for this within each council.

Development, determination and production of licensing policies – The cost of consultation and publishing policies can be fully recovered.

Advice and guidance – This includes advice in person, production of leaflets or promotional tools, and online advice.

Setting and reviewing fees – This includes the cost of time associated with the review, as well as the cost of taking it to a committee for approval.

Enforcement – This includes action required when investigating and enforcing against licensed drivers, vehicle proprietors and private hire operators.

9. **Major Risks**

9.1 The Council will be open to challenge should the calculation of the fees and charges prove to be contrary to the Act.

9.2 Judicial Review of a decision may be made on the following grounds:

- Ultra vires – no power to levy a particular fee, or fees used to raise revenue unlawfully, or
- Wednesbury rules – decision was unreasonable or irrational

10. **UN Sustainable Development Goals (UNSDG)**

10.1



11. **Key Decision Information**

11.1 Not applicable

12. **Earlier Cabinet/Committee Resolutions**

12.1 22nd February 2017 – Full Council

13. **List of Appendices**

13.1 Not applicable

14. **Background Papers**

14.1 LGA Guidance on Local Fee Setting