

CHESHIRE EAST COUNCIL

Licensing Committee

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| Date of Meeting: | 6 th March 2017 |
| Report of: | Environmental Protection Team Leader – Regulatory Services and Health |
| Subject/Title: | Adoption of the procedure for hearings in accordance with the Scrap Metal Dealers Act 2013 |

1.0 Report Summary

- 1.1 In accordance with the provisions of the Scrap Metal Dealers Act 2013, if the Council is minded to refuse an application for a Scrap Metal Dealers Licence, the applicant has a right of appeal to the Licensing Sub-Committee. In order for the hearing to be heard in a fair manner, the Council must agree the procedure for such hearings.

2.0 Recommendation

- 2.1 To approve the attached procedure in Appendix 1 for undertaking appeal hearings in accordance with the Scrap Metal Dealers Act 2013.

3.0 Reasons for Recommendations

- 3.1 In accordance with the Scrap Metal Dealers Act 2013, the Council must approve a procedure for appeal hearings.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications

- 6.1 Contained within the report.

7.0 Financial Implications

- 7.1 None

8.0 Legal Implications

- 8.1 Schedule 1 (7) of the Scrap Metal Dealers Act 2013, provides that where a local authority proposes to refuse an application for a licence, the applicant can request a hearing. When a hearing is requested the applicant must state

whether they wish to make representation to the Council either in writing or in person. Therefore, it is a requirement that the council adopts a formal procedure setting out how these hearings will be heard.

9.0 Risk Management

- 9.1 If there is no formal procedure in place setting out how the scrap metal dealer appeal hearings will be structured, there is the risk that a relevant parties may claim that they have not had a fair hearing.
- 9.2 The Scrap Metal Dealers Act 2013 permits an unsuccessful applicant to appeal to the Magistrates' Court against the refusal of an application following a hearing.

10.0 Background

- 10.1 The Scrap Metal Dealers Act 2013 created a licensing regime, which replaced the previous registration system for scrap metal dealers created by the Scrap Metal Dealers Act 1964. The Act maintained local authorities as the principal regulator but gave them the power to refuse to grant a licence to 'unsuitable' applicants and a power to revoke licences if a dealer becomes 'unsuitable'.
- 10.2 The Act requires that the Council must be satisfied that applicant(s) are suitable to carry on a business as a scrap metal dealer. To help with determining if a person is suitable, the Council must have regard to the following:
 - (a) Whether the applicant or any site manager has been convicted of any relevant offence;
 - (b) whether the applicant or any site manager has been the subject of any relevant enforcement action;
 - (c) any previous refusal of an application for the issue or renewal of a scrap metal licence (and the reasons for the refusal);
 - (d) any previous refusal of an application for a relevant environmental permit or registration (and the reasons for the refusal);
 - (e) any previous revocation of a scrap metal licence (and the reasons for the revocation);
 - (f) whether the applicant has demonstrated that there will be in place adequate procedures to ensure that the provisions of this Act are complied with.
- 10.3 If the Council is satisfied that the applicant(s) is not suitable to carry on a business as a scrap metal dealer, the applicant has a right to a hearing where they can state their case either in writing or in person. If the outcome of the hearing is to grant the licence there are only two statutory conditions which can be applied to the licence, but if the licence is refused the applicant can appeal to the Magistrates' Court.

11.0 Definitions under the Act

11.1 *Scrap Metal Dealer*

11.1.1 A dealer is defined under S21(2) of the Act as someone carrying on a business which consists wholly or in part of buying or selling scrap metal, whether or not the metal is sold in the form in which it is bought. However, where a manufacturing business that sells scrap metal as a by-product of the processes it uses, or because it has a surplus of materials is not captured by this definition (S21(3)).

11.1.2 Within this broad definition there is also a need to have consideration to further criteria to establish the applicability of the Act. Generally where the sale of the metal is incidental to the main type of work or business undertaken then a licence will not be needed.

11.1.3 A dealer also includes someone carrying on a business as a motor salvage operator. This is defined as a business that;

- Wholly or in part recovers salvageable parts from motor vehicles for reuse or resale and then sells the rest of the vehicle for scrap;
- Wholly or mainly involves buying written off vehicles and then repairing and selling them off;
- Wholly or mainly buys or sells motor vehicles for the purpose of salvaging parts from them or repairing them or selling them off.

11.2 *Scrap Metal Collectors*

A collector is defined (S22(4)) as a person who carries on a business as a scrap metal dealer otherwise than at a site, and regularly engages in the course of that business in collecting waste materials and old, broken, worn out or defaced articles by means of door to door visits.

11.3 *Scrap Metal Site*

A site is defined in the Act (S22(9)) as 'any premises used in the course of carrying on a business as a scrap metal dealer (whether or not metal is kept there)'. Due to the wording of the definition this means that someone who trades in scrap metal and is thus defined as a dealer under S21(2) will need a site licence for their office even if they do not operate a scrap metal store or yard.

12.0 Access to Information

The background papers relating to this report are available from the following sources or by contacting the report writer.

The Scrap Metal Dealers Act 2013 is available here
<http://www.legislation.gov.uk/ukpga/2013/10/enacted/data.htm>

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CHESHIRE EAST COUNCIL
GENERAL LICENSING SUB-COMMITTEE
Procedure for Hearings – Scrap Metal Dealers Act 2013

Note: If the Sub-Committee has not already elected a Chairman that will be the first item of business

Note: The Committee may request the Legal Adviser to advise on legal issues at any time throughout the process

Note: Where appropriate the Chairman has the right to vary the procedure

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| 1 | Chairman | The Chairman will: (a) Call the matter forward and confirm any declarations of interest (b) Request the parties to introduce themselves; and (c) Explain the procedure to be followed |
| 2 | Local Authority Officer | Will present the report introducing the case |
| 3 | Committee Members | Will be given the opportunity to ask questions of the Local Authority Officer |
| 4 | Applicant | Will be given the opportunity to ask questions of the Local Authority Officer |
| 5 | Applicant | The Applicant and/or representative will be given the opportunity to speak in support of the application and to produce evidence |
| 6 | The Local Authority Officer and Consultees who have made representations | Each in turn may ask <u>questions</u> of the applicant by way of clarification |
| 7 | Committee Members | Will be given the opportunity to ask the Applicant questions of <u>clarification</u> or to ascertain an applicant's suitability to hold the licence |
| 8 | Consultees who have made Representation | Will make representations |
| 9 | Applicant | The Applicant or representative may ask <u>questions</u> of Consultees who have made Representations and are represented at the meeting |
| 10 | Committee Members | May ask questions of clarification of the Consultees, who have made Representations and are represented at the meeting. |
| 11 | Chairman | To invite Consultees who have made Representations to make their closing address |
| 12 | Applicant | The Applicant or representative will be given the opportunity to summarise and add any further comments in support of the application |
| 13 | Committee | Will retire to consider the Application. |
| 14 | Committee | Will return to give its decision, with reasons, which will be announced by the Chairman and subsequently confirmed in writing. In cases where a decision cannot be given at the end of the hearing, parties will be advised of the decision within five working days. |