

LICENSING AND APPEALS COMMITTEE
21 January 2010

***PART 1 – PUBLIC DOCUMENT**

AGENDA ITEM No.

6

TITLE OF REPORT: ANIMAL LICENSING POLICY 2010

REPORT OF THE STRATEGIC DIRECTOR OF PLANNING, HOUSING AND ENTERPRISE

1. PURPOSE OF THE REPORT

- 1.1 The purpose of this report is to seek the Licensing and Appeals Committee's endorsement of the revised Animal Licensing Policy 2010 which has been the subject of further discussions with the experts identified at the previous meeting on 5th November 2009.

2. FORWARD PLAN

- 2.1 This report does not contain a recommendation on a key decision that has been notified to the public in the Forward Plan.

3. BACKGROUND

- 3.1 The previous Licensing and Appeals meeting on 5th November 2009 was addressed by existing licence holders and experts from the animal world, in particular in the field of reptiles and pet shops. The committee deferred the policy for further review and fine-tuning by the officers in conjunction with the experts.
- 3.2 Officers met on the 17th November to discuss the way forward and a letter was sent to existing licence holders advising them of the next steps in the process.
- 3.3 It was decided to invite the following experts to a further meeting on the 4th December 2009:

Mrs J Nunn	Pet Care Trust
Mr C Newman	REPTA
Mr P Eymor	Country Boarding Kennels & Cattery
Mr B Huffer	Cosy Cats Cattery
Mr C Woodard	Animal Services Manager, Stevenage Borough Council.

- 3.4 At the meeting on 4th December 2009, the Policy was agreed in principle, with the proviso that further fine-tuning of the Appendices, in particular in relation to Boarding Establishments, may be needed.
- 3.5 A Trade Forum will be established, covering all aspects of animal licensing, with a remit to keep the Appendices under review. Officers are confident that the Policy will allow all existing licence holders to continue trading with its flexibility for the Licensing and Enforcement Manager to allow minor departures from Policy where the licensing principles are still achieved. Any problems that are identified by the Trade Forum, however, could be considered by the Portfolio Holder with a view to making minor adjustments to the Policy if he deems it appropriate.

- 3.6 In the Committee Report for the 5th November 2009 meeting, reference was made to the 'five freedoms' contained within The Animal Welfare Act 2006. The 'five freedoms', however, were identified by the Farm Animal Welfare Council prior to the Animal Welfare Act 2006. The Animal Welfare Act 2006 refers to 'five needs', as follows:

- The need for a suitable environment;
(providing an appropriate environment, including shelter and a comfortable resting area)
- The need for a suitable diet;
(by ready access, where appropriate, to fresh water and a diet to maintain full health)
- The need to be able to exhibit normal behaviour patterns;
(by providing sufficient space, proper facilities and the company of an animal of its own kind, where appropriate)
- Any need to be housed with, or apart from, other animals; and
(by providing the company of an animal of its own kind, where appropriate)
- The need to be protected from pain, suffering, injury and disease.
(by prevention or rapid diagnosis and treatment, and ensuring conditions and treatment which avoid mental suffering)

4. APPROACH TO THE STATEMENT OF PRINCIPLES

- 4.1 The approach to the licensing principles that form the basis of the Policy is detailed in the original Committee Report dated 5th November 2009.

5. LEGAL IMPLICATIONS

- 5.1 There is no legal requirement for an Animal Licensing Policy and the existing licensing regime could lawfully continue. For each piece of legislation that allows the formation of local licensing conditions, a minimal set of conditions has been introduced.
- 5.2 As mentioned in the previous report the absence of a Policy from Elected Members could expose the Council to the risk of legal challenge through inconsistent and/or disproportionate application of potentially arbitrary standards. It should be noted that the suggested approach at 11.1.3 of greater flexibility for existing operators to achieve the required standards is not without the risk of legal challenge from new operators on the basis that they are being treated differently from existing operators.
- 5.3 Whilst the Council employ experienced professional Officers to fulfil this licensing function, Policy is a matter for Elected Members to determine and for Officers to implement and enforce.
- 5.4 Under the Constitution the terms of reference of the Licensing and Appeals Committee state that the Committee is able to consider all licensing matters. As the Policy is a discretionary one (as opposed to a statutory requirement) it is Cabinet's decision to approve or adopt the policy framework set out in this report.

6. FINANCIAL AND RISK IMPLICATIONS

- 6.1 Legislation allows for locally set licensing fees to cover the cost of administering and enforcing the respective legislation. It also allows for the cost of employing veterinary surgeons for inspection purposes to be passed on to the licence holder.

- 6.2 This Animal Licensing Policy will not place any new financial resource implications on the Council.

7. HUMAN RESOURCE AND EQUALITIES IMPLICATIONS

- 7.1 This Animal Licensing Policy will not place any new human resource implications on the Council.
- 7.2 The Council recognises the changing nature of equality legislation and incorporates national legislation and regulations into its scheme and services as appropriate, as set out in the Council's Corporate Equality Strategy. The Race Relations (Amendment) Act 2000 marked a very significant innovation in the legal framework. It placed much of what was previously only advisory and voluntary on to a statutory footing. The Act extends the provisions of the Race Relations Act 1976 to cover all the activities of all public authorities. It makes important extensions to public authority duties. Equivalent statutory duties have been created for disability by the Disability Discrimination Act 2005 and for gender by the Equality Act 2006. These duties divide into a general duty and specific duties.
- 7.3 The contents of this report do not directly impact on equality, in that it is not making proposals that will have a direct impact on equality of access or outcomes for diverse groups.

8. CONSULTATION

- 8.1 The consultation exercise was detailed in the original Committee Report dated 5th November 2009. Further consultation has taken place as detailed in section 3 of this Report.

9. RECOMMENDATIONS

- 9.1 That the revised Animal Licensing Policy, as attached at **Appendix A**, incorporating the results of the additional consultation with the experts, be supported by the Licensing and Appeals Committee.
- 9.2 That the Licensing and Appeals Committee recommend the adoption of the revised Animal Licensing Policy to Cabinet.

10. REASONS FOR RECOMMENDATIONS

- 10.1 To establish a Policy in relation to animal licensing, with appropriate local licence conditions, that will ensure the promotion of the 'five needs' introduced in the Animal Welfare Act 2006. The recommendation allows existing licence holders to plan for future changes whilst ensuring that the existing small businesses are not unduly burdened or put at financial risk as a result of implementing the new standards.

11. ALTERNATIVE OPTIONS CONSIDERED

- 11.1 There is the alternative option of an Animal Licensing Policy that may differ in content and extent. The proposed Animal Licensing Policy, whilst being comprehensive, aims to promote animal welfare and ensure consistent application of the existing national professional standards, whilst ensuring that existing licence holders can continue to operate without undue hindrance. The alternative Policy options considered are detailed in 11.1.1 to 11.1.5 below.

- 11.1.1 All existing licence holders must comply with the new Policy from the date it takes effect (1st April 2010). This approach means all licence holders (new and old) will all be required to meet the same standards at the same time, thus treating them equally. This option has the biggest impact on existing licence holders who may not have the resources to make the changes and keep the business open on this timescale.
- 11.1.2 All existing licence holders must comply with the new Policy as from 1st January 2013, thus having a three year period to upgrade their establishments. This approach is quite common in situations where new regulations are being introduced. A limited interim period is defensible and provides existing licence holders with certainty, and a greater period of time than at 11.1.1, in order to make any changes required. At the end of the interim period all licence holders (new and old) will be meeting the same standards.
- 11.1.3 All existing boarding establishment licence holders have an exemption from the new Policy size requirements whilst the current licence holders remain as licence holder, subject to certain conditions. This is the option that is being proposed. This option is not without the risk of challenge from potential new operators who would have to meet different standards (which may have cost implications) to the existing licence holders. A new operator purchasing an existing establishment would do so in the knowledge that they would need to make changes to the premises. Whilst existing licence holders will argue this may affect the price they achieve at sale, they have the option of making alterations prior to selling.
- 11.1.4 All existing boarding establishment licence holders have an exemption from the new Policy size requirements whilst the current licence holders remain as licence holder, subject to certain conditions. There is also a further three year period of exemption for any new licence holder to allow the existing licence holders to sell their businesses as going concerns. Again there is the risk of challenge to this approach, the risk being for a greater period of time (the extra 3 years) . Whilst it would allow the business to be sold as a going concern it would be very difficult to defend a challenge from a new operator being treated differently because they are setting up from scratch as opposed to buying an ongoing concern.
- 11.1.5 All existing boarding establishment licence holders have an exemption from the new Policy size requirements whilst the current licence holders remain as licence holder, subject to certain conditions. There is also a further period of exemption (grandfather rights) for any new licence holder providing the business remains in the family. There is a greater risk of challenge to this proposal from those treated differently. Additionally the policing of the grandfather rights would be difficult – what is meant by “the business remains in the family”? Is this full or partial ownership? Who is covered by the term ‘family’? This is potentially unlimited in time.
- 11.2 There is the alternative option of not adopting an Animal Licensing Policy. As mentioned earlier in this Report, this option could expose the Council to the risk of legal challenge through inconsistency or disproportionality and leave the decision of policy making to Officers on a case by case basis without any clear guidance from Elected Members.

12. APPENDICES

- 12.1 Appendix A - Final Proposed Animal Licensing Policy
(with track-changes since the meeting of 5th November 2009)

13. CONTACT OFFICERS

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14. BACKGROUND PAPERS

- 14.1 Licensing and Appeals Committee Report 5th November 2009.

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