

LICENSING AND APPEALS COMMITTEE

25 OCTOBER 2012

*PART 1 – PUBLIC DOCUMENT

AGENDA ITEM No.

6

TITLE OF REPORT: ANIMAL LICENSING POLICY 2013 – 2018

REPORT OF THE HEAD OF HOUSING AND PUBLIC PROTECTION

1. PURPOSE OF THE REPORT

- 1.1 The purpose of this report is to seek the Licensing and Appeals Committee's endorsement of the Animal Licensing Policy 2013 - 2018 which has been the subject of public consultation.

2. FORWARD PLAN

- 2.1 This report contains a recommendation on a key decision that was notified to the public in the Forward Plan in accordance with Council procedures.

3. BACKGROUND

- 3.1 Various legislation exists that gives the local authority the power to regulate animal establishment licensing:

- Animal Boarding Act 1963
- Pet Animals Act 1951 and Pet Animals Act 1951 (Amendment) Act 1983
- Riding Establishments Act 1964 and 1970
- Dangerous Wild Animals Act 1976
- Breeding of Dogs Act 1873 and 1991
- Breeding and Sale of Dogs (Welfare) Act 1999
- Zoo Licensing Act 1981

Livery yards, circuses, dog shows and similar do not currently require licensing by the local authority.

- 3.2 Historically, the Council had licensed animal establishments in accordance with the relevant legislation but without formal input from Members in respect of policy. The local authority may determine its own specific conditions in relation to licensing within the overall confines of the relevant legislation.

- 3.3 Whilst the previous licensing arrangements of the Council had worked effectively and produced a satisfactory standard for all licensed establishments, the absence of a formal policy exposed the Council to potential accusations of lack of transparency and that standards had been applied somewhat arbitrarily. Inconsistencies in the standards applied from one establishment to another, unless there was good reason based upon differences in the premises in question, could potentially expose the Council to an increased risk of legal challenge.

- 3.4 Whilst the legislation does allow the Council to set its own licensing conditions, there are National Model Standard Conditions, Codes of Best Practice and Industry Standards produced by professional bodies to assist with that process. Whilst these documents are not binding on the Council in a similar way as Guidance issued under the Gambling Act 2005 or Licensing Act 2003, the Council would need to demonstrate good reason for departing from these national standards.
- 3.5 The Animal Welfare Act 2006 came into force on 6th April 2007, consolidating much existing animal health and welfare legislation and providing new powers to deal with animal welfare matters. The underlying principles of the Animal Welfare Act 2006 are known as the 'five freedoms' and cover the welfare of all domestic or captive animals ensuring that the animals are accorded:
- Freedom from hunger and thirst; (by ready access to fresh water and a diet to maintain full health and vigour)
 - Freedom from discomfort; (by providing an appropriate environment including shelter and a comfortable resting area)
 - Freedom from pain, injury or disease; (by prevention or rapid diagnosis and treatment)
 - Freedom to express normal behaviour; and (by providing sufficient space, proper facilities and the company of an animal of its own kind)
 - Freedom from fear and distress (by ensuring conditions and treatment which avoid mental suffering).
- 3.6 There are existing Model Standard Conditions, Codes of Best Practice and Industry Standards produced by professional bodies such as:
- Chartered Institute of Environmental Health
 - Local Authorities Co-ordinators of Regulatory Services (LACORS), now known as LG Regulation.
 - Local Government Association
 - British Veterinary Association
 - Pet Care Trust
 - Other Nationally accepted Trade Associations
- 3.7 Many local authorities have already adopted these existing standards. With the likelihood that the existing standards would form the basis of any new national standards under the Animal Welfare Act 2006, other local authorities are now adopting, or considering adoption of, these standards.
- 3.8 Having considered this background to its animal licensing process and in order to achieve consistency of approach in its decision making with other local authorities, the Council adopted its first formal Animal Licensing Policy ("the Policy") which took effect from 1st April 2010, based predominately on available national standards.
- 3.9 The original policy introduced a new set of licensing requirements for all new premises licensed for the first time after the policy took effect. Existing licensed premises were allowed until 1st January 2013 to upgrade to the new requirements.
- 3.10 Following representations from the owners of existing catteries and kennels, the Licensing and Appeals Committee further exempted the existing animal boarding establishments from the new pen/kennel size requirements for the lifetime of the current business. Upon the sale of an existing business, the

new owners would have a period of five years to upgrade the pen/kennel sizes to the new size requirements.

- 3.11 The current Policy requires existing cattery and kennel licence holders to upgrade their premises to meet all new requirements, save for the specific pen/kennel size exemption, from 1st January 2013. A public consultation has been undertaken with regard to a new Animal Licensing Policy to take effect from 1st January 2013.

4. APPROACH TO THE LICENSING POLICY

- 4.1 Given the extensive nature of the consultation and discussions surrounding the introduction of the existing Policy for which the Licensing and Appeals Committee (as supported by Cabinet) gave a clear indication of their intentions, coupled with the fact that the Policy was based on National Model Conditions and Standards, the proposed Policy is predominately a continuation of the existing Policy
- 4.2 The pen/kennel size exemption given to cattery and kennel owners for the lifetime of their existing business, including the five year grace period upon sale of the business, has been retained. Existing cattery and kennel owners were also given a general exemption until 1st January 2013 to allow for minor works to upgrade their premises to meet the new Policy requirements. This resulted in phrases within the existing Policy such as *“All new units, built or newly licensed after 1st April 2010...”* to distinguish between the need for all new businesses to meet the Policy requirements as opposed to the aforementioned period of exemption for existing businesses. With the proposed Policy taking effect from 1st January 2013, the end of the exemption period, these distinguishing phrases have been removed as all premises will now be expected to comply with the requirements of the Policy.
- 4.3 Since the introduction of the existing Policy, the Council has been approached by a business requiring a licence to provide dog day crèche facilities, therefore, a new set of conditions relating to this specific activity has been included in the proposed Policy.
- 4.4 During the Licensing and Appeals Committee meeting which considered the formation of the existing Policy, the Licensing Team offered to host an Animal Licensing Forum to facilitate discussions between the trade and officers to assess the practicalities of the new Policy requirements. The purpose of the Forum was to provide the officers with feedback on the impact of the new Policy requirements and offer suggestions for officers to consider. The Licensing and Appeals Committee, as part of their resolution, requested that officers facilitate such a Forum.
- 4.5 Although the Forum was not as widely supported as originally hoped, consisting of predominately cattery owners and therefore not formally incorporated in the same way as other licensing Trade Forums, meetings were held to discuss the development of cattery licence conditions. The trade provided a revised list of cattery conditions for the consideration of officers which were discussed at subsequent meetings. Officers considered the proposals and provided feedback as to which proposals were acceptable for incorporation into the Policy, which were not acceptable and which needed further discussion.
- 4.6 Originally it had been the intention of officers to consult with the Portfolio Holder for Housing and Environmental Health with a view to amending the

Policy to incorporate the acceptable amendments arising from the Forum under delegated powers. Given that the process of considering the Forum's proposals was not resolved until June 2011, officers decided not to refer the matter to the Portfolio Holder as a new Policy was to be subject to a full formal consultation in 2012.

- 4.7 The amendments to the cattery licence conditions that were accepted by officers following discussions with the Forum have been incorporated into the proposed Animal Licensing Policy.
- 4.8 A consultation process was undertaken for a twelve week period between Monday 11th June 2012 and midnight on Sunday 2nd September 2012 in accordance with the Government Code of Practice on Consultation (as issued by the Department for Business Innovation and Skills). A policy consultation page was created on the Council's website including the proposed policy and an explanation of the process for making a representation.
- 4.9 A letter advising of the consultation process was sent to each of the following consultees:
- All current animal establishment licence holders
 - RSPCA
 - Local animal sanctuaries and/or welfare establishments
 - The Pet Trade and Industry Association
 - The public (via the website and local libraries)
 - NHDC Planning
 - NHDC Legal Services
 - Neighbouring local authorities
 - Veterinary surgeons (local and those used for inspection purposes)
 - Elected Members (via MIS)
- 4.10 During the consultation process, officers received an email enquiry from one of the cattery owners asking for clarification of a number of issues. The response to this email resulted in a combined formal response to the consultation from existing cattery owners.
- 4.11 This series of emails and the formal consultation response were forwarded by the cattery owners directly to the members of the Licensing and Appeals Committee and so have not been included as part of this report. Further copies of this correspondence can be provided upon request.
- 4.12 A response to the consultation was also received from Pets at Home recommending that we base our pet shop conditions on the Model Conditions for Pet Vending Licensing 2011.

5. CONSIDERATIONS

Suitability of the existing Policy

- 5.1 Given the concerns raised by the trade during the consultation process and committee stages prior to the adoption of the existing Policy, the natural starting point for the proposed Policy was to assess the suitability of the existing Policy.
- 5.1.1 Having reviewed the minutes of the Licensing and Appeals Committee meeting of 21st January 2010, the main trade concerns (other than those

incorporated into the existing Policy) are addressed individually below.

- 5.1.2 *The requirement for pet shop owners to record the scientific names of reptiles was onerous and unnecessary.*

and

The whole section of reptile conditions should be removed as it was onerous and unnecessary.

No pet shop that stocked reptiles prior to the introduction of the existing Policy has ceased stocking reptiles, indeed, an additional pet shop now stocks reptiles and had no concerns in meeting the new Policy requirements.

- 5.1.3 *Inspections should be risk-based not prescribed as detailed in the Policy.*

Risk-based inspections in respect of all types of licensed premises has been introduced in response to Government guidance and is reflected in the Policy, however, where the primary legislation requires an inspection as part of the application process this must still be undertaken.

- 5.1.4 *The Policy was too rigid and officers may not take the flexible approach to interpretation that they have alluded to through the use of the departure from policy section.*

and

The new animal boarding conditions would impose such a significant cost on existing businesses to upgrade to the new standards that businesses may cease trading.

At the Licensing and Appeals Committee meeting, officers stated clearly that no existing business would be refused a licence or required to cease trading providing that they maintained their existing standards, even where the new requirements were not met. That remains the position of officers and no business licensed at the time of the introduction of the Policy has subsequently been refused a licence or required to cease trading.

Furthermore, new businesses have obtained licences for the first time having met the requirements of the existing Policy. A dog day crèche, a new animal boarding establishment, a new riding establishment and several home-boarding establishments are now licensed by the council in full compliance with the existing Policy.

One of the existing animal boarding establishments at the time of the introduction of the existing Policy has subsequently sold the business as a going concern with the new owners fully aware of the requirement to upgrade the facility in line with the Policy requirements within the five-year window allowed by the Policy.

- 5.1.5 *Further amendments to the animal boarding conditions may be possible if a Trade Forum were to meet and engage with the officers.*

As detailed in paragraph 4.7 of this report, revised cattery conditions arising from discussion between officers and the trade at the Animal Forum have been incorporated into the proposed Policy. Where the trade were able to demonstrate that amendments to the conditions would still achieve the Policy

aims without being significantly different to the National Standards or Codes of Practice, officers accepted the recommendations unless they were contrary to legislative requirements or were impracticable to administer or enforce.

Dog Day Crèches

- 5.2 Having been approached about the possibility of licensing a new business providing dog day crèches in North Hertfordshire, officers had to consider an appropriate standard for such a facility as the existing policy did not include day crèches. With the benefit of professional advice from an officer of one of our neighbouring authorities, it was decided that the specialist nature of each facility meant that standards were more appropriately addressed on a case by case basis with the aim of achieving an acceptable balance between an animal boarding establishment and a home boarding establishment. This approach allowed officers to issue a licence for the new business, therefore, a new section has been included in the proposed Policy to confirm this approach.

Pet Shops

- 5.3 Pets at Home responded to the consultation by suggesting that the Council consider the adoption of the Model Conditions for Pet Vending Licensing 2011 issued by the Chartered Institute of Environmental Health. At the time of the adoption of the existing Policy, the council's pet shop conditions were based on the Local Government Association Model Standards for Pet Shop Licence Condition and the Pet Trade Industry Association Standards for Sizes, Stocking Densities and Water Quality for Aquatics, as amended to incorporate officers particular concerns in relation to reptiles.
- 5.3.1 The new Model Conditions, as suggested by Pets at Home, are predominately a collaboration of the documents originally used by the Council and are similar to the conditions contained within the existing Policy. The existing policy conditions have worked successfully for officers and contain the specific reptile requirements that officers consider essential for ensuring the welfare of reptiles within pet shops.
- 5.3.2 The proposed Policy, therefore, retains the current pet shop conditions contained within the existing Policy. Officers will, however, use the Model Conditions for Pet Vending Licensing 2011 issued by the Chartered Institute of Environmental Health as supplementary guidance to the interpretation and implementation of the Council's pet shop conditions.

Animal Boarding Establishments (specifically catteries)

- 5.4 The combined consultation response received from the cattery owners, and copied directly to all members of the Licensing and Appeals Committee, contains a variety of issues for consideration. For the purpose of the consultation exercise, it has been assumed that all documentation contained within the email received on 31st August 2012 (subsequently amended on 2nd September 2012) was part of the formal consultation response.
- 5.4.1 Many of the issues raised, for example the administration of the Animal Forum and dissatisfaction with the service provided, are not matters for consideration by the Committee as part of the process for recommending the adoption of a new Animal Licensing Policy. The Senior Licensing and Enforcement Officer has already provided a written response to these concerns and the Council has a formal procedure for registering

dissatisfaction with services provided (Compliments, Complaints and Comments) which would be the appropriate method for addressing any concerns the trade have in that respect.

- 5.4.2 There remains a concern amongst the cattery owners in respect of the need to upgrade to the new policy requirements and the potential impact on their existing businesses. The proposed Policy places no new requirements on the cattery owners over and above those contained within the existing Policy, indeed, as detailed in paragraph 4.7 of this report, officers have incorporated condition amendments proposed by the trade themselves.
- 5.4.3 Specific mention is made of the removal of the words “*All new units built or newly licensed after 1st April 2010.....*” in conditions such as 3.1.2 of Appendix A2 of the proposed Policy. This is not a new requirement, it is simply a replication of the requirements in the existing Policy which state:

3.3.3 *In order to ensure consistent requirements across the District and trading fairness, all existing animal boarding establishment licence holders as at 1st April 2010 will have until 1st January 2013 to upgrade their facilities so that they meet the Council’s new requirements.*

3.3.4 *As of 1st January 2013, any animal boarding establishment that does not meet the Council’s licensing conditions as detailed in Appendix A of this Policy will not be granted a licence unless paragraph 3.3.5 applies.*

[Note: Paragraph 3.3.5 refers to the pen/kennel size exemption.]

With the proposed Policy scheduled to take effect from 1st January 2013, the exemption for existing businesses between the period 1st April 2010 and 1st January 2013 will no longer apply and so all references to the exemption (ie “*All new units built or newly licensed after 1st April 2010.....*”) have been removed to reflect those paragraphs.

- 5.4.4 The majority of the remaining policy related concerns relate to the trade’s concern that officers will not retain their current flexible interpretation of the required standards that will result in lost businesses or significant cost implications to remain in business. As mentioned earlier in this report, no business has been refused a licence or made to cease trading due to non-compliance with the policy requirements. The Senior Licensing and Enforcement Officer gave a verbal assurance at the previous Licensing and Appeals Committee in respect of safeguarding existing businesses and has repeated this assurance in his email to the owner of Waterdell Cattery (copied directly to all members of the Licensing and Appeals Committee as part of the consultation response) which states:

“As I have stated many times in the past, and in this response, it has never nor will never be the Council’s intention to force existing licence holders out of business; it is important, however, to promote consistency across the trade in terms of conditions with regard to any nationally approved standards. Existing boarding establishments already have a pen size exemption contained within the Policy and there is scope to allow other minor exemptions, for example damp proof membrane and 1:80 falls, where the establishment complies with all other aspects of the requirements. When building or improvement works are undertaken, however, existing owners will be expected to move towards full compliance with the conditions.”

It is further accepted that a degree of choice for cattery users is beneficial, however, the basic standards need to be fair and consistent. The Council would not seek to preclude existing businesses that have been licensed for many years and have offered a good service over something as minor as a lack of damp proof membrane, however, without a standard set of conditions the move towards parity and consistency has no foundation.”

6. LEGAL IMPLICATIONS

- 6.1 There is no legal requirement for an Animal Licensing Policy, however, the absence of a Policy from Elected Members could expose the Council to an increased risk of legal challenge through inconsistent and/or disproportionate application of potentially arbitrary standards.
- 6.2 Whilst the Council employ experienced professional officers to undertake inspections of licensed premises and advise on technical matters involved in fulfilling the animal licensing function, Policy is a matter for Elected Members to determine and for Officers to implement and enforce.
- 6.3 Under the Constitution, the terms of reference of the Licensing and Appeals Committee include consideration of all licensing matters and the making of representations to Council (or Cabinet) on Statements of Licensing Policy. As the Policy is a discretionary one (as opposed to a statutory requirement) it is Cabinet's decision whether to adopt the policy framework set out in this report.

7. FINANCIAL AND RISK IMPLICATIONS

- 7.1 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 specialist inspection purposes to be passed on to the licence holder.
- 7.2 This Animal Licensing Policy will not place any new financial or risk implications on the Council as it is predominately a continuation of the existing Policy .
- 7.3 There would be a risk to the Council in not having a formally adopted Animal Licensing Policy for the reasons detailed in paragraph 6.1 of this report.

8. HUMAN RESOURCE AND EQUALITY IMPLICATIONS

- 8.1 This Animal Licensing Policy will not place any new human resource implications on the Council as it is predominately a continuation of the existing Policy.
- 8.2 The Council incorporates the statutory equalities duties which apply to all its activities into policies and services as appropriate, as set out in the Council's Corporate Equality Strategy. The Council also recognise that in society, groups and individuals continue to be unfairly discriminated against and it acknowledges its responsibilities to actively promote good community relations, equality of opportunity and combat discrimination in all its forms.

9. CONSULTATION WITH EXTERNAL AND INTERNAL STAKEHOLDERS

- 9.1 The Licensing Team consulted with consultees as detailed in paragraph 4.9 of this report.
- 9.2 The existing Animal Licensing Policy is available on the Council's website. A hard copy can be forwarded on request.
- 9.3 The proposed Animal Licensing Policy, as used for the consultation, is available on the Council's website. A hard copy can be forwarded on request.
- 9.3 Copies of all consultation responses are attached as Appendix A.
- 9.4 The proposed Animal Licensing Policy, incorporating amendments incorporated during the consultation exercise and detailed in paragraphs 4.2, 4.3 and 4.7 of this report, is attached as Appendix B.

10. RECOMMENDATIONS

- 10.1 That the proposed Animal Licensing Policy, as attached at Appendix B, be supported by the Licensing and Appeals Committee.
- 10.2 That the Licensing and Appeals Committee recommend the adoption of the Animal Licensing Policy to Cabinet.

11. REASONS FOR RECOMMENDATIONS

- 11.1 To establish a Policy in relation to animal licensing, with appropriate local licence conditions, that will ensure the promotion of the 'five freedoms' introduced in the Animal Welfare Act 2006.
- 11.2 To establish a transparent interpretation of the Council's requirements for the licensing of an animal establishment and to ensure consistent application of such requirements.
- 11.3 To allow 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.
- 11.4 To establish a fair and consistent standard for all existing and new licensed animal establishments, having due regard to paragraph 11.3 of this report.

12. ALTERNATIVE OPTIONS CONSIDERED

- 12.1 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.
- 12.2 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 an increased 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.

13. APPENDICES

- 13.1 Appendix A - Copies of all consultation responses.
- 13.2 Appendix B - Proposed Animal Licensing Policy.

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15. BACKGROUND PAPERS

- 15.1 Legislation as listed in paragraph 3.1 of this report.
- 15.2 Existing Animal Licensing Policy.
- 15.3 Minutes of the Licensing and Appeals Committee dated 21st January 2010.