



Contact Officer:

Sophie Butcher, Democratic Services
Officer

19 September 2023

Dear Councillor

Your attendance is requested at a meeting of the **LICENSING COMMITTEE** to be held in the Council Chamber, Millmead House, Millmead, Guildford, Surrey GU2 4BB on **WEDNESDAY 27 SEPTEMBER 2023** at **7.00 pm**.

Yours faithfully

Tom Horwood
Joint Chief Executive

MEMBERS OF THE COMMITTEE

Chairman: Councillor Catherine Young
Vice-Chairman: Councillor Keith Witham

Councillor Bilal Akhtar	The Mayor, Councillor Masuk Miah
Councillor Amanda Creese	Councillor Patrick Oven
Councillor Gillian Harwood	Councillor David Shaw
Councillor Catherine Houston	Councillor Katie Steel
Councillor Bob Hughes	Councillor Jane Tyson
Councillor Tom Hunt, Deputy Leader of the Council	Councillor Dominique Williams
Councillor Sandy Lowry	

QUORUM 5



THE COUNCIL'S STRATEGIC FRAMEWORK (2021- 2025)

Our Vision:

A green, thriving town and villages where people have the homes they need, access to quality employment, with strong and safe communities that come together to support those needing help.

Our Mission:

A trusted, efficient, innovative, and transparent Council that listens and responds quickly to the needs of our community.

Our Values:

- We will put the interests of our community first.
- We will listen to the views of residents and be open and accountable in our decision-making.
- We will deliver excellent customer service.
- We will spend money carefully and deliver good value for money services.
- We will put the environment at the heart of our actions and decisions to deliver on our commitment to the climate change emergency.
- We will support the most vulnerable members of our community as we believe that every person matters.
- We will support our local economy.
- We will work constructively with other councils, partners, businesses, and communities to achieve the best outcomes for all.
- We will ensure that our councillors and staff uphold the highest standards of conduct.

Our strategic priorities:

Homes and Jobs

- Revive Guildford town centre to unlock its full potential
- Provide and facilitate housing that people can afford
- Create employment opportunities through regeneration
- Support high quality development of strategic sites
- Support our business community and attract new inward investment
- Maximise opportunities for digital infrastructure improvements and smart places technology

Environment

- Provide leadership in our own operations by reducing carbon emissions, energy consumption and waste
- Engage with residents and businesses to encourage them to act in more environmentally sustainable ways through their waste, travel, and energy choices
- Work with partners to make travel more sustainable and reduce congestion
- Make every effort to protect and enhance our biodiversity and natural environment.

Community

- Tackling inequality in our communities
- Work with communities to support those in need
- Support the unemployed back into the workplace and facilitate opportunities for residents to enhance their skills
- Prevent homelessness and rough-sleeping in the borough

AGENDA

1 APOLOGIES FOR ABSENCE

2 LOCAL CODE OF CONDUCT - DISCLOSABLE PECUNIARY INTERESTS

In accordance with the local Code of Conduct, a councillor is required to disclose at the meeting any disclosable pecuniary interest (DPI) that they may have in respect of any matter for consideration on this agenda. Any councillor with a DPI must not participate in any discussion or vote regarding that matter and they must also withdraw from the meeting immediately before consideration of the matter.

If that DPI has not been registered, the councillor must notify the Monitoring Officer of the details of the DPI within 28 days of the date of the meeting.

Councillors are further invited to disclose any non-pecuniary interest which may be relevant to any matter on this agenda, in the interests of transparency, and to confirm that it will not affect their objectivity in relation to that matter.

3 MINUTES (Pages 7 - 12)

To confirm the minutes of the meeting of the Licensing Committee held on 26 July 2023.

4 ANNOUNCEMENTS

To receive any announcements from the Chairman of the Committee.

5 LICENSING COMMITTEE ITEMS

5.1 **Animal Licensing Policy** (Pages 13 - 70)

5.2 **Extension to Pavement Licensing** (Pages 71 - 94)

5.3 **Taxi and Private Hire Policy - Private Hire Vehicle Operator Contracts** (Pages 95 - 104)

6 LICENSING COMMITTEE WORK PROGRAMME (Pages 105 - 112)

**PLEASE CONTACT US TO REQUEST THIS DOCUMENT IN
AN ALTERNATIVE FORMAT**

LICENSING COMMITTEE

- * Councillor Catherine Young (Chairperson)
- * Councillor Keith Witham (Vice-Chairperson)

- | | |
|--------------------------------|----------------------------------|
| * Councillor Bilal Akhtar | The Mayor, Councillor Masuk Miah |
| * Councillor Amanda Creese | * Councillor Patrick Oven |
| * Councillor Gillian Harwood | * Councillor David Shaw |
| * Councillor Catherine Houston | * Councillor Katie Steel |
| * Councillor Bob Hughes | * Councillor Jane Tyson |
| Councillor Tom Hunt | * Councillor Dominique Williams |
| * Councillor Sandy Lowry | |

*Present

L1 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Tom Hunt and the Mayor, Councillor Masuk Miah.

L2 LOCAL CODE OF CONDUCT - DISCLOSABLE PECUNIARY INTERESTS

There were no disclosures of interest.

L3 MINUTES

The minutes of the Licensing Committee meeting held on 23 November 2022 were signed by the Chairperson as an accurate record.

The Committee noted that there were no minutes of the Licensing Committee held on 14 March 2023 as it was adjourned owing to the meeting being inquorate.

L4 LICENSING COMMITTEE ANNUAL REPORT

The Committee received an annual report from the Senior Specialist – Licensing and Community Safety, Mike Smith. The report covered the areas of licensing that the Council as a Licensing Authority had responsibility for in administering and enforcing a number of pieces of legislation such as the Licensing Act, Gambling Act, Sexual Entertainment Venues, Charities, Street Trading, Pavement Licensing and Animal Activity Licensing.

The Committee noted that it was good to see there had been no appeals for new premises licence application. There had been an increase in Temporary Event Notices (TENs) in 2022 which was a result of post-Covid as well as the variance in the number of suspensions.

The Senior Specialist – Licensing and Community Safety, Mike Smith confirmed that the Licensing Committee had made good decisions in relation to premises licence applications which had resulted in no appeals being made. In 2020/21 there was a huge reduction in the number of TENs owing to the Covid restrictions in place. However, in 2022 the number of TENs received was back up to 600 and anticipated a similar number in 2023. In terms of suspensions, premises licences could either be suspended by way of a review, with a Sub-Committee imposing the sanction of a suspension for a period of up to three months. Where the licensing annual fee had not been paid then the Licensing Authority had a duty to take legal action to suspend a premises licence for non-payment of the fee. This occurred in 2020 where a few premises licences were suspended. However, the Council was fairly lenient overall, being conscious of the fact that a large proportion of businesses were closed within that time. In 2022, no suspensions had been issued for non-payment of annual fees. The Licensing Authority was currently going through the process of making sure that fees were paid and reconciled so that the Council was able to recover its costs, therefore the figure given for suspensions this year could be higher.

The Chairperson, Councillor Young wished to convey her congratulations to the licensing team on the work that undertook during Covid as well as for the work put towards the Purple Flag Award which was now in its eighth year.

The Committee noted the Licensing Annual Update report for their information.

L5 TAXI LICENSING ANNUAL REPORT

The Committee received an annual update report on the taxi and private hire trade from Mike Smith, Senior Specialist, Licensing and Community Safety. The Committee noted that the Council in its role as the Licensing Authority was responsible for administering and enforcing a number of pieces of legislation and guidance surrounding the Councils licensing and registration functions. The report detailed the Council's responsibilities, details of the service, statistics, service requests and future projects. It also detailed the support that the Licensing Authority had offered to the trade whilst the covid restrictions were in place. The Committee noted that the taxi policy was updated a few years ago and brought in a number of further measures in respect of standards for vehicles

and drivers. For example, livery vehicles now had to be fitted with CCTV, following the approval of that policy in 2021.

The Committee noted that the number of hackney carriage driver applications had increased in 2021-22, probably as a result of covid. It was further noted that the taxi knowledge test could be completed at the applicant's own home and confirmation was sought that this was correct.

Mike Smith, Senior Specialist, Licensing and Community Safety confirmed that the Council's knowledge test had proved popular. It used to be offered as a paper-based test that applicants had to sit in Council Chamber and officers subsequently marked. However, this procedure took up a lot of officer time, to generate the test paper and mark 20-30 test papers at a time and then manually communicate the results to the drivers. As covid restrictions lifted there was a pressure on local authorities to make sure that they had met their statutory duties in issuing taxi driver licences. In order to fulfil that demand, the Council therefore started offering an online test which had to be booked and a secure link was then sent to the applicant's email address. Mike did not have the pass and fail rates of the tests to hand but could be obtained and circulated to the Committee for their information. The integrity of the process was called into question by allowing people to take the test at home. It was noted that people did still fail the test. Further checks and balances could be introduced such as monitoring IP addresses. However, in order to bring the test back in-house would require IT support which already had a number of projects delayed. Assistance was therefore required from an outside IT company and it was uncertain when that would transpire.

The Committee remained concerned regarding allowing applicants to take the taxi knowledge test at home. How was the identity of the applicant verified given that someone else could easily take the test on that person's behalf. The safety of the public was paramount and the Committee wanted to ensure that the person who had passed to test was the same person who would be driving the taxi.

Mike Smith, Senior Specialist, Licensing and Community Safety confirmed that the safety of the public was of paramount importance. People sitting the taxi knowledge test are sent a unique link to their email address. However, a more robust checking process was sought whereby the testing could be taken back in house and peoples ID's checked. It was also noted that the taxi knowledge test was only a small part of the process of becoming a taxi driver. Applicants needed to complete an enhanced DBS check, a medical examination and a driving

assessment where they have to show a copy of their driving licence. Whilst it was acknowledged that the knowledge test was open to abuse there were a number of safeguards in place to ensure that the applicant was one in the same person.

The Committee noted the table relating to the cases considered by the licensing or regulatory sub-committee. In 2022, there were 13 cases considered in relation to whether a driver or an applicant was a fit and proper person. What was the proportion of those 13 cases where the person or applicant was found to be unfit and how many cases were either revoked or refused. Mike Smith, Senior Specialist, Licensing and Community Safety confirmed that he did not have the figures to hand but would collate the information to send to councillors shortly.

The Committee noted the table on page 25 which detailed that the Council had received 133 complaints in 2022 which were mostly in relation to safety and comfort. Had any complaints been received about the refusal of taxi drivers to carry guide dogs? Mike Smith, Senior Specialist, Licensing and Community Safety confirmed that he was not aware of any such complaints relating to a refusal by taxi drivers to take guide dogs. A piece of law was introduced last year to give additional protection to disabled people in this regard and the Licensing Authority had made drivers aware of their duties of carrying passengers who require extra assistance. In 2017, Mike was made aware of a concern raised in relation to this and trade test assessments were carried out as a result.

The Committee noted the annual update it received in relation to Taxi and Private Hire licensing.

L6 PURPLE FLAG REPORT

The Committee received an annual update on Guildford's Purple Flag accreditation. This was awarded by the Association of Town and City Managers and celebrated safety, diversity and partnership working in the night time economy. Any town which held such accreditation demonstrated that it had a well run night time economy where people can go out and feel safe. Guildford was the only town in Surrey that held the accreditation and was one of 70-80 holders of the award nationally. The Licensing Authority worked closely with its partners, Experience Guildford and Pubwatch. Following 'Future Guildford's' restructuring at the Council resources were limited on progressing Purple Flag as much as they wished to however officers were very much committed to supporting its principles.

The Committee queried how the accreditation process worked. It was confirmed that the award had to be applied for every year. There was also a bi-annual

inspection process carried out in person and interim renewals were issued via a paper based exercise.

The Committee noted the update provided in relation to the Guildford Purple Flag Accreditation.

L7 SHORT TALK ON GUILDFORD NIGHT TIME ECONOMY

The Committee noted and received a short talk regarding the Guildford night time economy from representatives of Experience Guildford and Pubwatch.

Please view the talk here: [Licensing Committee - Wednesday 26 July 2023, 7:00pm - Start video at 0:33:20 - Guildford Borough Council webcasts \(public-i.tv\)](#)

L8 LICENSING COMMITTEE WORK PROGRAMME

The Committee noted a request to include on its work programme the licensing of mobile home sites in the Borough. It was confirmed that this work fell under the remit of the private housing team to whom this issue would be raised with to provide an update.

The meeting finished at 8.25 pm

Signed

Date

Chairman

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Licensing Committee Report

Report of the Strategic Director - Place

Author: Mike Smith

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Date: 27 September 2023

Licensing Policy for Activities Involving Animals

Executive Summary

On 1 October 2018 changes to the way in which animal boarding establishments, dog breeding establishments, pet shops and riding establishments are licensed were introduced and the Council commenced responsibility for the licensing of the keeping of animals for exhibition.

On 20 May 2019 the Licensing Committee approved a new Licensing Policy for the Licensing of Activities involving Animals. The Policy was intended to be reviewed after three years and on 23 November 2022 Licensing Committee approved an updated Policy for public consultation.

This report seeks to inform the Committee of the results of the public consultation and asks that the updated Policy be approved.

Recommendation to Licensing Committee

That the Committee approves the updated Animal Welfare Licensing Policy following a 12-week public consultation.

Reasons for Recommendation:

To improve the regulation of the licensing of activities involving animals in the Borough by recommending the adoption of a Policy covering animal licensing.

1. Purpose of Report

- 1.1 The report informs the Committee of the results of the public consultation on the proposed updates to the Council's Policy concerning the Licensing of Activities Involving Animals in the Borough.

2. Strategic Framework

- 2.1 The licensing of animals will contribute to the themes in the Council's Corporate Plan 2021-25 as follows:

Homes and Jobs – supporting the business community through well-regulated animal establishments.

Environment – protecting the environment through well managed, licensed animal establishments.

Communities – ensuring the impact of establishments on communities is well managed via the licensing process.

3. Background

- 3.1 The Animal Welfare Act 2006 introduced a new licensing power which enabled nationally set regulations to be made for any animal-related activities specified in those regulations. As a result, the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 significantly changed the way animal related businesses are inspected and licensed.
- 3.2 The Regulations define the animal-based activities that require licences as follows:

- Selling animals as pets (or with a view to their being later resold as pets) in the course of a business including keeping animals in the course of a business with a view to their being so sold or resold.
 - Providing or arranging for the provision of accommodation for other people's cats or dogs in the course of a business on any premises where the provision of that accommodation is a purpose of the business.
 - Hiring out horses in the course of a business for either riding, instruction in riding, or both.
 - Breeding three or more litters of puppies in any 12-month period; or breeding dogs and advertising a business of selling dogs.
 - Keeping or training animals for exhibition in the course of a business for educational or entertainment purposes, either to any audience attending in person, or by the recording of visual images of them by any form of technology.
- 3.3 The Regulations mean that any operator providing one or more of the licensed activities will be encompassed by one 'Animal Activity licence'. If an applicant is running more than one licensable animal related activity, each activity will be assessed separately and set out in one licence. The length of licence will depend on the businesses 'star rating' may be anything between one and three years dependent on the outcome of their inspection.
- 3.4 The Regulations comprise a set of general conditions in respect of matters such as record keeping, types and numbers of animals, staffing, maintaining a suitable environment and diet, monitoring behaviour, handling of the animals, protecting the animals from pain, suffering, injury and disease and dealing with emergencies. Each specific animal activity then has its own set of more detailed conditions, tailored to that particular activity.
- 3.5 If the grant of a licence is refused, or the licence is revoked, the operator will be able to appeal to a First Tier Tribunal, which would comprise a panel with specialist knowledge administered by HM Courts and Tribunal Service.

- 3.6 The regime requires a 'qualified inspector' to carry out the inspections, and in the case of the grant of a dog breeding establishment and at grant and renewal of horse-riding establishments they must either be or be accompanied by a veterinary surgeon. To qualify to inspect premises, a person must hold a Level 3 certificate granted by a body, recognised and regulated by the Office of Qualifications and Examinations Regulations which oversees training and assessment of persons inspecting and licensing certain animal activities businesses, and must have passed an independent exam. Their certificate must apply to the specific type of activities they are inspecting. A qualified veterinary surgeon is also a qualified inspector.
- 3.7 The inspection process under the Regulations is comprehensive and is built around providing the premises with a 'risk rating'. This process will establish whether the business is 'low risk' or 'higher risk' based on the level to which it meets the standards set out in the regulations and guidance, and will award between one and five stars, thus determining the length of the licence (with the exception of 'Keeping and Training Animals for Exhibition' for which all licences will be issued for 3 years as default). The star rating will be displayed on the licence and included in the Council's public register.
- 3.8 Businesses established as higher risk will attain between one and four stars. If one or two stars are issued, they will be issued a one-year licence, and can expect a minimum of one unannounced visit during that period. If four stars are attained, the licence will be issued for two years, and the licence holder can expect one unannounced visit during the two-year period.
- 3.9 Lower risk businesses can be issued a licence for any period between one and three years. Licence holders can expect a minimum of one unannounced visit at any time during the period specified on the licence.
- 3.10 Any individual who carries on a licensable activity will be designated as the operator of the business, and can apply for a licence providing they:

- are not disqualified from holding a licence in accordance with Regulation 11 and Schedule 8.

3.11 In order to ensure compliance with our duties to ensure that an individual has not been disqualified from holding a licence, on 20 May 2019 the Council adopted an Animal Licensing Policy, which sets out criteria which will ensure that only suitable applicants are granted a licence.

3.12 The Policy sets out that upon application the Council: -

- Will require the applicant to provide a basic disclosure (DBS) certificate; and
- May request information from Surrey Police under our information sharing agreement about any relevant convictions an applicant may hold. This information sharing is possible under Section 17 of the Crime and Disorder Act 1998, which requires that local authorities must have regard to the likely effect of the exercise of their functions on and do all that they can to prevent crime and disorder in their area.

3.13 An applicant will be granted a licence if the Council is satisfied that the licence conditions will be met. In considering this, the Council will take into account whether the applicant is a fit and proper person to be the operator of the activity. The term 'fit and proper' is not defined in the legislation or guidance. The draft Policy states that the Council will consider a 'fit and proper person' to be an individual who can demonstrate upon application that they have: -

- the right to work in the UK
- no relevant convictions
- not been disqualified from holding a licence
- the knowledge, experience, compliance history and ability to comply with licence conditions and safeguard the welfare of animals in their care
- made suitable management and training arrangements to safeguard and protect any staff and/or members of the public who may be affected by the licence activity.

4. Changes

- 4.1 The Council's Policy was approved on 20 May 2019 for an initial 3-year period and on 23 November 2022 an updated Policy was considered by Licensing Committee and approved for public consultation.
- 4.2 The majority of the changes included are intended to allow the Council to achieve the RSPCA Gold Paw Print for Animal Licensing. The Council currently holds the Bronze level award.
- 4.4 In addition, a section on the Council's expectation on the 'business test' has been written.

5. Consultation

- 5.1 Officers and the Council's Web and Communications Teams have carried out publicity work to highlight the work in this area and Pawprint Award.
- 5.2 Following approval of the consultation by the Committee, Officers will follow our consultation standards by carrying out a public consultation over a 12 week period between 8 May and 7 August by:
- Writing to relevant authorities (for example the Police, Defra)
 - Writing to interested parties (for example current licence holders)
 - Publicising the consultation on the Council's website
 - Using social media to inform the public of the consultation and direct them to the website.
- 5.3 The consultation was slightly delayed during the Pre-election period before May's Council elections.
- 5.4 One (1) response was received to the consultation from the Kennel Club. The full consultation response is included as Appendix 4.
- 5.5 The response from the Kennel Club raises concern about the updated guidance in the Council's Policy on the business test, specifically that

'hobby breeders' should not be considered as requiring a licence for the activity of dog breeding.

- 5.6 Sections 5.8 to 5.11 of the updated Policy discuss the business test and set out that in considering whether an activity is considered a 'business' the Guidance recommends that states that councils should consider the HMRC 9 badges of trade. The Council will look at these, together with all other factors when considering whether an individual requires licensing. The draft continues that we will consider the Government's trading allowance of £1000 however the figure is income and not necessarily a profit. For example, some animal species sold are high value and by selling few of these this threshold can be reached with a licence being required.
- 5.7 In response to the concerns raised by the Kennel Club, Officers would advise that the Council must consider the Legislation, Guidance and its own Policy when considering whether a licence is required, however ultimately each case will be looked at on its merits, with the intention of ensuring that those who need a licence hold one for the purposes of upholding animal welfare standards.

6. Equality and Diversity Implications

- 6.1 Under the general equality duty as set out in the Equality Act 2010, public authorities are required to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation as well as advancing equality of opportunity and fostering good relations between people who share a protected characteristic and those who do not.
- 6.2 The protected grounds covered by the equality duty are: age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief, and sexual orientation. The equality duty also covers marriage and civil partnership, but only in respect of eliminating unlawful discrimination.

- 6.3 The law requires that this duty to have due regard be demonstrated in decision making processes. Assessing the potential impact on equality of proposed changes to policies, procedures and practices is one of the key ways in which public authorities can demonstrate that they have had due regard to the aims of equality duty.
- 6.4 There are no Equality and/or Diversity issues arising from the new Regulations, or approval of an Animal Welfare Licensing Policy. The Regulations and Policy allow an application to be made and assessed against standard criteria, irrespective of any protected characteristics of the applicant.

7. Financial Implications

- 7.1 The duration of the licences granted will depend on a risk rating, with some licences being granted for a longer period than others.
- 7.2 The animal licensing scheme falls within the definition of ‘services’, and is subject to the EU Services Directive, incorporated into UK law as the Provision of Services Regulations 2009.
- 7.3 The fees are split into two parts – the application fee, payable at the time of submission to cover the Council’s costs in considering and determining the application, and the licence fee, payable by successful applicants which covers ongoing enforcement and compliance requirements.
- 7.4 All fees have been calculated and will be reviewed annually, taking into account the requirements of Regulation 13 with the aim of full cost recovery.

8. Legal Implications

- 8.1 The Regulations and guidance issued by DEFRA under the Regulations, set out the activities which must be licensed, who may apply for a licence and how the Council must determine applications for a licence. The Regulations also set out the conditions which must be applied to

any licence granted.

- 8.2 Should the Council refuse to grant or renew a licence, the applicant may appeal to a First-tier Tribunal. This must be done within 28 days of the decision.
- 8.3 Once a licence has been granted, the Council may suspend, vary or revoke the licence if the licence conditions are not complied with, the Regulations have been breached, information supplied is found to be false or misleading or it is necessary to do so to protect the welfare of an animal. There is no right of appeal against a suspension, however the licensee may make written representations to the Council and upon receipt of those representations, the Council must re-consider its decision. A licence may only be suspended for a maximum of 28 days, following which the licence must be reinstated, with or without variation or revoked. When a licence is varied or revoked, the licence holder may appeal to a First-tier Tribunal. This must be done within 28 days of the decision.
- 8.4 The statutory guidance issued by DEFRA requires the Council to provide an appeal process to enable applicants to challenge the initial star rating they are given. The guidance sets out the timescales and the level of officer who should hear the appeal. If a business is still dissatisfied, they can challenge the appeal outcome by way of judicial review. It will also be possible for applicants to pay for a re-inspection following the carrying out of improvements that would lead to a higher star rating.
- 8.5 The adoption of a licensing policy will assist the Council to carry out its functions under the Regulations in a fair and transparent way.

9. Human Resource Implications

- 9.1 The Council currently has 51 licensed establishments. Before the legislative update this number was 25. The number of investigations into unlicensed activities has also significantly increased with the expanding requirements, further increasing the demand on Officer time.

9.2 As the Regulations set out specific qualifications which local authority inspectors must hold, Officers have been required to attend training and obtain the relevant qualification.

9.3 The approval of the Policy can be managed from within the current resource.

10. Summary of Options

10.1 The Licensing Committee is asked to consider and approve a draft Animal Licensing Policy for public consultation.

10.2 There are three options available after considering the information in this report:

1. Approve the Policy as set out in Appendix 1 following public consultation; or
2. Approve a modified policy; or
3. Not to approve a Policy.

11. Conclusion

11.1 In October 2018, The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 came into effect replacing all the existing legislation. The new legislation also significantly expands the type of animal activity that requires licensing and introduces a star rating scheme for licensed animal activity businesses.

11.2 A Policy concerning the Animal Activity Licensing was initially approved in May 2019, with the current version having been updated in line with the 3 year review cycle.

11.3 The draft policy is presented for approval following public consultation, which did not elicit that there should be any changes from the consultation draft.

12. Background Papers

[Animal Welfare \(Licensing of Activities Involving Animals\) Regulations 2018](#)

[Procedural Guidance Notes for Local Authorities 2018](#)

13. Appendices

Appendix 1: Animal Welfare Licensing Policy for Approval

Appendix 2: Animal Welfare Licensing Policy for Approval with changes highlighted

Appendix 3: RSPCA Pawprint Award Criteria

Appendix 4: Consultation response received from the Kennel Club

14. Consultation

<i>Service</i>	<i>Sign off date</i>
Executive Head of Regulatory Services	09/08/23
Finance / 151 Officer	
Legal / Governance	
HR	
Equalities	
Lead Councillor	
CMB	

Committee Services	
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Animal Welfare Licensing Policy

2023 Draft for Approval Following Consultation

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1. Introduction

- 1.1 This policy sets out how the Council will exercise its functions under the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018, Dangerous Wild Animals Act 1976 and Zoo Licensing Act 1981.
- 1.2 This policy has been introduced pursuant to the commencement of the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 (“the Regulations”) on 1 October 2018. It will be reviewed at least every 3 years following first approval, and at other times where considered necessary, for example, to reflect significant changes in relevant legislation or guidance.
- 1.3 This policy sets out the principles we will use when dealing with applicants and licence holders with whom the Council is responsible for.
- 1.4 This policy provides guidance to any person with an interest in Animal licensing. In particular, but not exclusively:
 - Applicants for licences,
 - Existing licence holders,
 - Licensing Officers,
 - Members of the Licensing Committee, and
 - Courts and Tribunals hearing appeals against local authority decisions.
- 1.5 This policy sets out the criteria to be taken into account by the Council when determining whether or not an applicant or an existing licence holder is suitable to be granted, have renewed or continue to hold a Licence. In addition to criminal convictions the Council will also take into account other factors such as general character, compliance with licence requirements/guidance/conditions, non-criminal behaviour and police or other relevant records or information from reliable sources.

2. Policy Objectives

- 2.1 The Policy is designed to ensure that:-
 - any person who carries on, attempts to carry on or knowingly allows a licensable activity to be carried on holds a licence in accordance with the Regulations,
 - the licence holder is not disqualified from holding a licence in accordance with the requirements of the Regulations,
 - that the five overarching principles of animal welfare, (known as the “five needs”) introduced by the Animal Welfare Act 2006 are upheld in any decision,
 - the safeguarding of any children or vulnerable persons in contact with a licensable activity is ensured
 - each application is considered on its merits
 - decisions made by the Council are transparent and consistent
 - relevant objectives of the Council’s Corporate Business Plan are supported
 - that the obligations of the Council’s Public Sector Equality duty under the Equality Act 2010, section 149 are fulfilled by eliminating discrimination, harassment, victimisation and other conduct prohibited by the Act,

advancing equality of opportunity and fostering good relations between persons who share and those who do not share protected characteristics.

2.2 In addition, the Council will base its licensing regime on the following principles which arise from the responsibilities arising under the Animal Welfare Act 2006:-

- Responsibility to protect the welfare of all fellow creatures;
- Ensuring the welfare of domestic or captive animals by implementing appropriate standards that promote the “five needs”;
- Ensuring that persons responsible for the management of animal welfare observe recognised standards of good practice;
- Ensuring that, so far as it falls within its powers, the requirements of all animal-related legislation will be rigorously and pro-actively enforced.

3. Animal Welfare Act

3.1 The Animal Welfare Act 2006 (the Act) established that reasonable welfare standards must be maintained whilst unifying much animal legislation, including responsibilities falling to other enforcement agencies.

3.2 The Act introduced five overarching principles of animal welfare, known as the “five needs” which are:

1. The need for a suitable environment;

(by providing an appropriate environment, including shelter and a comfortable resting area)

2. The need for a suitable diet;

(by ready access, where appropriate, to fresh water and a diet to maintain full health)

3. 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)

4. Any need to be housed with, or apart from, other animals;

(by providing the company of an animal of its own kind, where appropriate); and

5. 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. Licensable Activities

4.1 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 came into force on 1st October 2018 and will have an impact on establishments licensed under the previous animal health legislation. This includes those previously licensed as pet shops, catteries, kennels, home boarders, dog crèche, riding establishments, dog breeders and performing animals.

- 4.2 A licence is required when any of the licensable activities outlined in Schedule 1 of the regulations are undertaken. These are:
- selling animals as pets (Part 2);
 - providing or arranging for the provision of boarding for cats or dogs (including the provision of boarding for cats; kennels for dogs; home boarding for dogs; or day care for dogs (Part 3);
 - hiring out horses (Part 4);
 - breeding dogs (Part 5);
 - keeping or training animals for exhibition (Part 6).
- 4.3 The Regulations replace previous licensing and registration regimes under the following legislation:
- Pet Animals Act 1951
 - Animal Boarding Establishments Act 1963
 - Riding Establishments Acts 1964 & 1970
 - Breeding of Dogs Act 1973 & Breeding and Sale of Dogs (Welfare) Act 1999
 - Performing Animals (Regulation) Act 1925
- 4.4 The Regulations do not impact on the licensing of Dangerous Wild Animals under the Dangerous Wild Animals Act 1976 and Zoos under the Zoo Licensing Act 1981, which remains unaffected by the legislative changes, however will fall within the scope of this Policy.

5. Suitability of Applicants and the Business Test

Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018

- 5.1 In accordance with the Regulations any individual, who carries on a licensable activity will be designated as the operator of the business and can apply for a licence providing they are not disqualified from holding a licence in accordance with Regulation 11 and Schedule 8.
- 5.2 In order to ensure compliance with our duties to ensure that an individual has not been disqualified from holding a licence, upon application the Council:-
- Will require the applicant to provide a basic disclosure (DBS) certificate (issued within 3 months of the date of application) showing that they are not disqualified from holding a licence, and/or hold no relevant convictions which may affect whether they are a 'fit and proper' person to hold a licence; and
 - May request information from Surrey Police under our information sharing agreement about any relevant convictions an applicant may hold. This information sharing is possible under Section 17 of the Crime and Disorder Act 1998, which requires that local authorities must have regard to the likely effect of the exercise of their functions on, and do all that they can to prevent crime and disorder in their area.
- 5.3 An applicant will be granted a licence if the Council is satisfied that the licence

conditions will be met. In considering this, the Council will take into account whether the applicant is a fit and proper person to be the operator of the activity. The term 'fit and proper' is not defined in the legislation or guidance. For the purpose of this Policy, the Council will consider a 'fit and proper person' to be an individual who can demonstrate upon application that they have:-

- the right to work in the UK
- no relevant convictions
- not been disqualified from holding a licence
- the knowledge, experience, compliance history and ability to comply with licence conditions and safeguard the welfare of animals in their care
- made suitable management and training arrangements to safeguard and protect any staff and/or members of the public who may be affected by the licence activity.

Dangerous Wild Animals and Zoos

5.4 In order to ensure compliance with our duties to ensure that an individual has not been disqualified from holding a licence, upon application the Council:-

- Will require the applicant to provide a basic disclosure (DBS) certificate issued within 3 months of the date of application; and
- May request information from Surrey Police under our information sharing agreement about any relevant convictions an applicant may hold.

Relevance of convictions

5.5 The purpose of this section is to offer guidance on how the Council can determine whether an applicant/licence holder suitable to either be granted a licence in the first place or retain such a licence. In all cases, the Council will consider the conviction or behaviour in question, what weight should be attached to it and each and every case will be determined on its own merits, but in light of these guidelines. Most applicants or licensees will have no convictions and that is clearly the ideal situation. In relation to other people, it is accepted that people do make mistakes, and it is further accepted that many learn from those mistakes and do not continue to commit further offences. Accordingly, in many cases an isolated conviction, especially if committed some time ago, will not prevent the grant or renewal of a licence.

5.6 The council will not normally grant a licence to a person with one (or more) convictions for any of the following offences:

- Offences involving violence
- Possession of a weapon
- Sex and indecency offences
- Offences involving a minor
- Offences involving dishonesty
- Offences involving drugs
- Licensing offences

- Offences involving Animals, including but not limited to offences involving danger or suffering caused to animals

5.7 Any offences or behaviour not expressly covered by this Policy may still be taken into account.

Business Test

5.8 The legislation sets out that activities carried out in the course of a business require licensing, with Part 1, Schedule 1 of the Regulations setting out that the circumstances which a local authority must take into account in determining whether an activity is being carried on in the course of a business, which is whether the operator:

- makes any sale by, or otherwise carries on, the activity with a view to making a profit, or
- earns any commission or fee from the activity.

5.9 In considering whether an activity is considered a 'business' the Guidance recommends that states that councils should consider the HMRC 9 badges of trade. The Council will look at these, together with all other factors when considering whether an individual requires licensing.

5.10 The Guidance also suggests considering the Government's trading allowance of £1000. The Council's position is that this should not solely be relied on but is to be considered. This £1000 figure is income and not necessarily a profit. For example some animal species sold are high value and by selling few of these this threshold can be reached with a licence being required.

5.11 In cases where income is received for an activity, the Council will assume that a business is being operated unless the operator can demonstrate otherwise.

6. The role of Safeguarding and the Business Test

Safeguarding

6.1 The regulations have the aims of maintaining and improving animal welfare standards. However there are other safeguarding considerations arising from licensable activities which the Council has a statutory duty to ensure, in particular surrounding the protection of children and vulnerable persons.

6.2 The Council is aware that some licensable activities may involve unsupervised contact with children and/or vulnerable persons. For example the tuition of a young person provided at a Riding Establishment, or entertaining at a children's party with an exhibition of animals.

6.3 To this extent, the Council would expect applicants and licence holders whose activities involve contact with children or vulnerable persons to:-

- Have a written safeguarding policy and provide training for staff; and
- Have a procedure for vetting staff who have unsupervised contact with young/vulnerable persons.

7. Application Process

7.1 Licence applications must be submitted in writing on the prescribed application form, along with any supporting information (as detailed in the application form and as required under this Policy), together with the appropriate fee. Proof of the planning permission required for the relevant activity on the premises should also be provided.

7.2 The Council will notify licence holders when their existing licence will expire (3 months prior to expiry) and licence holders must make a new application at least 10 weeks before the licence expires to continue the activity without a break. It is the licence holder's responsibility to ensure that any renewal application is made in good time, and the Council cannot be held responsible for any delays or lapses of a licence caused by an incomplete or late application.

7.3 Payment for vet inspections required either by legislation or by the Council in order to determine the application, will be an additional charge passed on to the applicant/license holder.

7.4 The Guidance stipulates that once a local authority receives an application for the grant or renewal of a licence it must do all of the following before granting or renewing a licence:

- The Council must consider whether the conduct displayed by the applicant indicates that they are a fit and proper person to carry out the licensable activity and meet their licence conditions.
- The Council must inspect the site of the licensable activity and assess if it is likely to meet the licence conditions. The inspection must be completed by a suitably qualified inspector present (as well as a veterinarian for the initial inspection of a dog breeding establishment, or a listed veterinarian for inspections of horse riding establishments). The inspector must prepare a report, in accordance with the requirements of regulation 10, to be submitted to the local authority following their inspection.
- The inspector's report will contain information about the operator, any relevant premises, any relevant records, the condition of any animals and any other relevant matter and state whether or not the inspector considers that the licence conditions will be met.
- Ensure that the appropriate fees have been paid, these can include fees for the consideration of the application, the reasonable anticipated costs of consideration of a licence holder's compliance with the Regulations, the reasonable anticipated costs of enforcement in relation to any licensable activity of an unlicensed operator and any costs reasonably anticipated in relation to the provision of information to the Secretary of State.

8. Rating and Licence duration

8.1 Licences can be issued for a period of either one, two or three years depending on the risk rating and level of compliance. This also corresponds

with the Star Rating for the establishment.

8.2 The Scoring matrix is below:

Scoring Matrix		Welfare Standards		
		Minor Failings (existing business that are failing to meet minimum standards)	Minimum Standards (as laid down in the schedules and guidance)	Higher Standards (as laid down in the guidance)
Risk	Low Risk	1 Star 1yr licence Min 1 unannounced visit within 12 month period	3 Star 2yr licence Min 1 unannounced visit within 24 month period	5 Star 3yr licence Min 1 unannounced visit within 36 month period
	Higher Risk	1 Star 1yr licence Min 1 unannounced visit within 12 month period	2 Star 1yr licence Min 1 unannounced visit within 12 month period	4 Star 2yr licence Min 1 unannounced visit within 24 month period

8.3 Licences for the keeping or training animals for exhibition are issued for three years.

9. Standards and Conditions

Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations

- 9.1 The Regulations include mandatory conditions for each licensable activity and DEFRA has produced associated guidance. The conditions are divided into two categories namely General Conditions (stipulated in Schedule 2) and Specific Conditions from the associated Schedule of the Regulations.
- 9.2 Applicants/licence holders will need to meet all the mandatory conditions, although minor failings may be noted/recorded providing they do not compromise the welfare of the animals (these should be predominantly administrative in nature).
- 9.3 For each activity (except keeping or training animals for exhibition) a number of “higher standards” have been included in the guidance. Meeting the higher standards is optional but is the only way to gain a higher star rating.
- 9.4 The higher standards are classified into two categories – required (mandatory) and optional. These will usually be colour coded into blue and red respectively. To qualify as meeting the higher standards the business must achieve all the required (mandatory) standards as well as a minimum of 50% of the optional higher standards.
- 9.5 The Regulations make provision for Officers to take samples for laboratory testing from any animals on premises occupied by an operator for the purposes of ensuring the licence conditions are being complied with. A Licence holder must comply with any reasonable request of an inspector to facilitate the identification and examination of an animal and the taking of

samples and, in particular, must arrange the suitable restraint of an animal if so requested by an inspector.

- 9.6 Samples should be as non-invasive as possible, however inspectors may deem more invasive samples necessary if there are concerns over the welfare of the animals. The provision for sampling is primarily aimed at veterinarians carrying out inspections and it is not expected that samples be taken by those without the training to properly and safely do so.

Additional Expectations of Pet Vendors

- 9.7 The Council recognises the concerns of the RSPCA that primates are not suitable companion animals, as their welfare needs cannot be met in a domestic environment. Consequently, the Policy recommends primates should not be kept or sold by pet vendors within the Guildford Borough area.

Additional Expectations of Pet Vendors and Breeders

- 9.8 There is also additional responsibility placed upon all vendors and breeders to ensure animals are sold to good homes. As such the Council would expect all sellers and breeders to have a procedure that enables them to be confident that customers are able to meet an animal's welfare needs, and are fully aware of their responsibilities under the Animal Welfare Act 2006.

Dangerous Wild Animals

- 9.7 The Council will usually impose Defra's standard conditions, in addition to any premises/animal specific conditions deemed to be required by the Inspecting Officer/Vet.

Zoos

- 9.8 The Council will usually impose Defra's standard conditions, in addition to any premises/animal specific conditions deemed to be required by the Inspecting Officer/Vet.

10. Granting an application

- 10.1 Where a licence is issued the Council will provide the following details:

- the Licence with the Star Rating;
- details of how the business has been rated including a list of the higher standards the business currently fails to meet or a list of the minimum standards the business is failing to meet and resulting in a "minor failing" category;
- a copy of the risk management assessment table;
- details of the appeals process and timescales.

- 10.2 Any fee(s) required upon the grant of the licence must be paid in full prior to the issue of the licence.

11. Refusing Applications

- 11.1 The Council will consider the report from the inspector and any comments made by the applicant when deciding whether to issue a licence.
- 11.2 The Council will refuse to issue a licence if it considers that the applicant cannot meet the licence conditions, for example, if the granting of a licence will have a negative impact on animal welfare or if the level of accommodation, staffing or management is inadequate for the well-being of animals.
- 11.3 The Council will also refuse to issue or renew a licence if the applicant has a history of non-compliance with licensing conditions or requirements, is obstructive towards officers, or if there are safeguarding concerns arising from the licensed activity. The above list is not exhaustive, but indicative of the circumstances where they Council will want to refuse an application.
- 11.4 The Council will also refuse an application if it considers that the applicant does not meet the 'fit and proper person' test.
- 11.5 A licence cannot be issued to an operator who is disqualified.
- 11.6 Any application fees or veterinary inspection fees paid will not be refunded for unsuccessful applications.
- 11.7 If a licence is refused, the applicant will have the right of appeal to a First-tier Tribunal within 28 days of the decision notice.

12. Appeals to Star Rating

- 12.1 To ensure fairness to the business, the Council has an appeals procedure in place for the operator to dispute the star rating given.
- 12.2 The business will be provided with supporting information (the inspection reports) which will highlight the inspecting officer's decision on how the risk rating, compliance level and star rating has been determined. The business is encouraged to discuss the matter initially with the inspecting officer where possible.
- 12.3 A business may appeal if they consider their star rating to be wrong - in other words it does not reflect the standards found at the time of inspection. Any appeal to the rating given must be made in writing within 21 days.
- 12.4 A business may wish to apply for a re-inspection or re-rating on a chargeable basis following completion of works to rectify any non-compliance or improvements to achieve higher standards.
- 12.5 An appeal will be assessed and determined by an appointed manager within the Department, who will conduct a 'desk based' appraisal of the rating given.
- 12.6 The appointed managers for this purpose are the Licensing Team Leader, or Regulatory Services Manager in their absence.

12.7 If the business disagrees with the outcome of the appeal they can only challenge the decision by means of judicial review.

13. Variations, Suspensions and Revocations of Licences

13.1 The Regulations provide for a local authority at any time to vary a licence:

- On the application in writing of the licence holder, or
- On the initiative of the local authority, with the consent in writing of the licence holder.

13.2 In addition to the above a local authority may suspend, vary or revoke a licence without the consent of the licence holder if:

- The licence conditions are not being complied with,
- There has been a breach of the Regulations,
- Information supplied by the licence holder is false or misleading, or
- It is necessary to protect the welfare of an animal.

13.2 A suspension or variation of a licence will normally take effect 7 working days after the decision has been issued to the licence holder unless the reason is to protect the welfare of an animal in which case the local authority may stipulate that the decision has immediate effect.

13.3 A decision to vary or suspend the licence must be notified to the licence holder in writing, explaining the reasons for the decision, and providing information regarding when the suspension or variation comes into effect and the rights of the licence holder to make written representation, as well as any specific changes deemed necessary in order to remedy the situation.

13.4 The decision to vary, suspend or revoke a license will be dependent on the severity of the situation. If an operator fails to meet administrative conditions or provide information when requested then this could potentially lead to the suspension of a licence. If such a scenario happens repeatedly, the Council may consider revocation appropriate. Revocation of a licence will also occur in an instance where poor welfare conditions are discovered or it would otherwise benefit the welfare of the animals involved to be removed from the activity. Variations can occur if adjustments need to be made, whether that is to the licence itself or to the premises/animals referred to in the licence.

13.5 Following the issuing of the notice of suspension or variation, the licence holder will have 7 working days to make written representation. Upon receipt of this the Council will decide whether to continue with the suspension or variation of the licence or cancel the decision.

13.6 If the licence has been altered with immediate effect to protect the welfare of an animal then the Council must indicate that this is the reason.

13.7 The business will not be able to trade once the suspension of a licence has come into effect and cannot do so until the decision is overturned by the local authority upon being satisfied that licence conditions are being met.

13.8 There is no right of appeal against the suspension of a licence. After 28 days of suspension the licence must be revoked or reinstated.

- 13.8 A licence holder may appeal to a First-tier Tribunal if they do not agree with the decision made by the local authority to vary or revoke a licence. This must be done within 28 days of the decision.

14. Transfer of a licence upon the death of a licence holder

- 14.1 If a licence holder dies, the procedure in regulation 12 of the Regulations applies. It allows the personal representative of the deceased to take on the licence provided that they inform the local authority within twenty-eight days of the death that they are now the licence holders. The licence will then remain in place for three months from the death of the former holder or for the rest of the time it was due to remain in force if that time period is shorter. The new licence holder should then apply for a new licence one month before the expiry of this new period.
- 14.2 Additionally the local authority can extend the three month period by up to another three months if requested by the personal representative and if they believe this time is needed to wind up the estate of the former licence holder.
- 14.3 If the personal representative does not notify the local authority within 28 days of the death of the licence holder, the licence will cease to have effect after those 28 days.

15. Inspections During the Course of a licence

- 15.1 There will be cases where inspections must be carried out during the term of a licence.
- 15.2 For the activity of hiring out horses, there is a requirement for an annual inspection by a listed veterinarian, regardless of the total length of the licence. The local authority must appoint a listed veterinarian to inspect the premises on which the activity is being carried out before the end of the first year after the licence is granted and then each subsequent year.
- 15.3 Unannounced inspections can also be carried out and will be used in the case of complaints or other information that suggests the licence conditions are not being complied with or that the welfare of the animals involved in a licensed activity is at risk.
- 15.4 During the course of an inspection the inspector may choose to take samples for laboratory testing from the animals on the premises occupied by an operator. The operator must comply with any reasonable request of an inspector to facilitate the identification, examination and sampling of an animal including ensuring that suitable restraints are provided if requested.
- 15.5 The Council will use a suitably qualified inspector to carry out inspections. The inspector will be assisted and/or accompanied as necessary by the Council's appointed Vet or any other relevant specialist which may be required depending on the nature of the inspection.

15.6 The Council uses a Licensing database to record all licensing and other regulatory actions. This includes inspections and it allows us to maintain a register of inspections and when interim inspections are due.

16. Appointments and Qualifications of Inspectors

16.1 The Council has appointed Inspectors and Veterinarians to carry out duties under the Licensing Regulations and Animal Welfare Act. Details of this are available on request.

16.2 All inspectors must be suitably qualified. This is defined in the Guidance as:

- Any person holding a Level 3 certificate granted by a body, recognised and regulated by the Office of Qualifications and Examinations Regulation which oversees the training and assessment of persons in inspecting and licensing certain animal activities businesses, confirming the passing of an independent examination. A person is only considered to be qualified to inspect a particular type of activity if their certificate applies to that activity;
- Any person holding a formal veterinary qualification, as recognised by the Royal College of Veterinary Surgeons (“RCVS”), together with a relevant RCVS continuing professional development record;

16.3 Further appropriate training for licensing officers on other relevant matters, for example the socialisation and behavioural needs of puppies and dogs at breeding establishments, will be provided where deemed necessary.

17. Fee Structure

17.1 The current level of licence fee will be displayed on the Council’s webpage.

17.2 All fees have been calculated and reviewed annually, taking into account the statutory requirements of Regulation 13, with the aim of full cost recovery.

18. Enforcement

18.1 The Regulations introduce a range of enforcement powers to allow the Council to issue a suspension, variation or revocation notice where licence conditions are not being complied with; there is a breach of the regulations or issues relating to the protection of the welfare of an animal.

18.2 The service of an enforcement notice is subject to a strict process and includes provision for the right to make written representations and/or appeal.

18.3 It is an offence to breach any licence condition. It is also an offence not to comply with an inspector’s request in the process of taking a sample from an animal.

18.4 It is also an offence to obstruct an inspector who has been appointed by a local authority to enforce the Regulations. Committing any of these offences could result in an unlimited fine.

- 18.5 Anyone who carries on any of the licensable activities without a licence is liable to imprisonment for a term of up to six months, a fine or both. Section 30 of the Animal Welfare Act 2006 allows for local authorities to prosecute for any offences under that Act.
- 18.6 The post-conviction power from section 34 of the Animal Welfare Act 2006 is in place whereby a person convicted of an offence under the Act or Regulations may be disqualified from owning, keeping, participating in the keeping of animals and/or from being party to an arrangement under which they can control or influence the way an animal is kept. They may also be disqualified from transporting or dealing in animals. Breaching these disqualifications is an offence.
- 18.7 The post-conviction power from section 42 of the Animal Welfare Act is also in place whereby a court can cancel a currently existing licence and disqualify a person from holding a licence for any period it sees fit when that person is convicted of an offence under the Act or Regulations.
- 18.8 The Council works closely with partners in accordance with a locally established joint enforcement protocol and will aim to promote the welfare of animals and safety of the public.
- 18.9 The main enforcement and compliance role for the Council in terms of the Regulations will be to ensure compliance with the conditions placed upon the licence and investigate and take appropriate action on unlicensed premises.
- 18.10 The Council will log and investigate as it considers necessary all complaints relating to Animal Establishments which are currently licensed or may require a licence. The Council will require complainants to provide their name and contact details so as to ensure that a complaint is not malicious in nature, and so that witness evidence may be obtained if required for further action. When investigating complaints officers will take care to not reveal the identity of the complainant, unless the complainant has agreed otherwise, or unless it is necessary for the progression of legal proceedings.
- 18.11 In addition to the investigation of complaints, the Council will monitor and gather information about unlicensed activities using all available sources of information; for example, unlicensed puppy breeders or pet sellers advertising online, that could fall within the scope, and to proactively approach, and if appropriate licence, those involved in such activities.
- 18.12 We aim to achieve and maintain a consistent approach when we investigate complaints, carry out inspections and make our decisions. In reaching any decision we will consider the following criteria:
- seriousness of any offences or breach of conditions
 - operator's past history
 - consequence(s) of non-compliance
 - likely effectiveness of the various enforcement options
 - danger to the welfare of animals and/or public

18.13 In carrying out its enforcement duties with regards to the inspection of premises, the variation, suspension or revocation of licences, investigation of complaints and the powers to institute criminal proceedings in respect of certain offences under the Act, the Council has adopted an enforcement policy, which is available on www.guildford.gov.uk.



Animal Welfare Licensing Policy

2022 Draft for Consultation

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1. Introduction

- 1.1 This policy sets out how the Council will exercise its functions under the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018, Dangerous Wild Animals Act 1976 and Zoo Licensing Act 1981.
- 1.2 This policy has been introduced pursuant to the commencement of the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 (“the Regulations”) on 1 October 2018. It will be reviewed at least every 3 years following first approval, and at other times where considered necessary, for example, to reflect significant changes in relevant legislation or guidance.
- 1.3 This policy sets out the principles we will use when dealing with applicants and licence holders with whom the Council is responsible for.
- 1.4 This policy provides guidance to any person with an interest in Animal licensing. In particular, but not exclusively:
 - Applicants for licences,
 - Existing licence holders,
 - Licensing Officers,
 - Members of the Licensing Committee, and
 - Courts and Tribunals hearing appeals against local authority decisions.
- 1.5 This policy sets out the criteria to be taken into account by the Council when determining whether or not an applicant or an existing licence holder is suitable to be granted, have renewed or continue to hold a Licence. In addition to criminal convictions the Council will also take into account other factors such as general character, compliance with licence requirements/guidance/conditions, non-criminal behaviour and police or other relevant records or information from reliable sources.

2. Policy Objectives

- 2.1 The Policy is designed to ensure that:-
 - any person who carries on, attempts to carry on or knowingly allows a licensable activity to be carried on holds a licence in accordance with the Regulations,
 - the licence holder is not disqualified from holding a licence in accordance with the requirements of the Regulations,
 - that the five overarching principles of animal welfare, (known as the “five needs”) introduced by the Animal Welfare Act 2006 are upheld in any decision,
 - the safeguarding of any children or vulnerable persons in contact with a licensable activity is ensured
 - each application is considered on its merits
 - decisions made by the Council are transparent and consistent
 - relevant objectives of the Council’s Corporate Business Plan are supported
 - that the obligations of the Council’s Public Sector Equality duty under the Equality Act 2010, section 149 are fulfilled by eliminating discrimination, harassment, victimisation and other conduct prohibited by the Act,

advancing equality of opportunity and fostering good relations between persons who share and those who do not share protected characteristics.

2.2 In addition, the Council will base its licensing regime on the following principles which arise from the responsibilities arising under the Animal Welfare Act 2006:-

- Responsibility to protect the welfare of all fellow creatures;
- Ensuring the welfare of domestic or captive animals by implementing appropriate standards that promote the “five needs”;
- Ensuring that persons responsible for the management of animal welfare observe recognised standards of good practice;
- Ensuring that, so far as it falls within its powers, the requirements of all animal-related legislation will be rigorously and pro-actively enforced.

3. Animal Welfare Act

3.1 The Animal Welfare Act 2006 (the Act) established that reasonable welfare standards must be maintained whilst unifying much animal legislation, including responsibilities falling to other enforcement agencies.

3.2 The Act introduced five overarching principles of animal welfare, known as the “five needs” which are:

1. The need for a suitable environment;

(by providing an appropriate environment, including shelter and a comfortable resting area)

2. The need for a suitable diet;

(by ready access, where appropriate, to fresh water and a diet to maintain full health)

3. 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)

4. Any need to be housed with, or apart from, other animals;

(by providing the company of an animal of its own kind, where appropriate); and

5. 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).

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- 5.2 In order to ensure compliance with our duties to ensure that an individual has not been disqualified from holding a licence, upon application the Council:-
- Will require the applicant to provide a basic disclosure (DBS) certificate (issued within 3 months of the date of application) showing that they are not disqualified from holding a licence, and/or hold no relevant convictions which may affect whether they are a 'fit and proper' person to hold a licence; and
 - May request information from Surrey Police under our information sharing agreement about any relevant convictions an applicant may hold. This information sharing is possible under Section 17 of the Crime and Disorder Act 1998, which requires that local authorities must have regard to the likely effect of the exercise of their functions on, and do all that they can to prevent crime and disorder in their area.
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conditions will be met. In considering this, the Council will take into account whether the applicant is a fit and proper person to be the operator of the activity. The term 'fit and proper' is not defined in the legislation or guidance. For the purpose of this Policy, the Council will consider a 'fit and proper person' to be an individual who can demonstrate upon application that they have:-

- the right to work in the UK
- no relevant convictions
- not been disqualified from holding a licence
- the knowledge, experience, compliance history and ability to comply with licence conditions and safeguard the welfare of animals in their care
- made suitable management and training arrangements to safeguard and protect any staff and/or members of the public who may be affected by the licence activity.

Dangerous Wild Animals and Zoos

5.4 In order to ensure compliance with our duties to ensure that an individual has not been disqualified from holding a licence, upon application the Council:-

- Will require the applicant to provide a basic disclosure (DBS) certificate issued within 3 months of the date of application; and
- May request information from Surrey Police under our information sharing agreement about any relevant convictions an applicant may hold.

Relevance of convictions

5.5 The purpose of this section is to offer guidance on how the Council can determine whether an applicant/licence holder suitable to either be granted a licence in the first place or retain such a licence. In all cases, the Council will consider the conviction or behaviour in question, what weight should be attached to it and each and every case will be determined on its own merits, but in light of these guidelines. Most applicants or licensees will have no convictions and that is clearly the ideal situation. In relation to other people, it is accepted that people do make mistakes, and it is further accepted that many learn from those mistakes and do not continue to commit further offences. Accordingly, in many cases an isolated conviction, especially if committed some time ago, will not prevent the grant or renewal of a licence.

5.6 The council will not normally grant a licence to a person with one (or more) convictions for any of the following offences:

- Offences involving violence
- Possession of a weapon
- Sex and indecency offences
- Offences involving a minor
- Offences involving dishonesty
- Offences involving drugs
- Licensing offences

- Offences involving Animals, including but not limited to offences involving danger or suffering caused to animals

5.7 Any offences or behaviour not expressly covered by this Policy may still be taken into account.

Business Test

5.8 The legislation sets out that activities carried out in the course of a business require licensing, with Part 1, Schedule 1 of the Regulations setting out that the circumstances which a local authority must take into account in determining whether an activity is being carried on in the course of a business, which is whether the operator:

- makes any sale by, or otherwise carries on, the activity with a view to making a profit, or
- earns any commission or fee from the activity.

5.9 In considering whether an activity is considered a 'business' the Guidance recommends that states that councils should consider the HMRC 9 badges of trade. The Council will look at these, together with all other factors when considering whether an individual requires licensing.

5.10 The Guidance also suggests considering the Government's trading allowance of £1000. The Council's position is that this should not solely be relied on but is to be considered. This £1000 figure is income and not necessarily a profit. For example some animal species sold are high value and by selling few of these this threshold can be reached with a licence being required.

5.11 In cases where income is received for an activity, the Council will assume that a business is being operated unless the operator can demonstrate otherwise.

6. The role of Safeguarding

Safeguarding

6.1 The regulations have the aims of maintaining and improving animal welfare standards. However there are other safeguarding considerations arising from licensable activities which the Council has a statutory duty to ensure, in particular surrounding the protection of children and vulnerable persons.

6.2 The Council is aware that some licensable activities may involve unsupervised contact with children and/or vulnerable persons. For example the tuition of a young person provided at a Riding Establishment, or entertaining at a children's party with an exhibition of animals.

6.3 To this extent, the Council would expect applicants and licence holders whose activities involve contact with children or vulnerable persons to:-

- Have a written safeguarding policy and provide training for staff; and
- Have a procedure for vetting staff who have unsupervised contact with young/vulnerable persons.

7. Application Process

7.1 Licence applications must be submitted in writing on the prescribed application form, along with any supporting information (as detailed in the application form and as required under this Policy), together with the appropriate fee. Proof of the planning permission required for the relevant activity on the premises should also be provided.

7.2 The Council will notify licence holders when their existing licence will expire (3 months prior to expiry) and licence holders must make a new application at least 10 weeks before the licence expires to continue the activity without a break. It is the licence holder's responsibility to ensure that any renewal application is made in good time, and the Council cannot be held responsible for any delays or lapses of a licence caused by an incomplete or late application.

7.3 Payment for vet inspections required either by legislation or by the Council in order to determine the application, will be an additional charge passed on to the applicant/license holder.

7.4 The Guidance stipulates that once a local authority receives an application for the grant or renewal of a licence it must do all of the following before granting or renewing a licence:

- The Council must consider whether the conduct displayed by the applicant indicates that they are a fit and proper person to carry out the licensable activity and meet their licence conditions.
- The Council must inspect the site of the licensable activity and assess if it is likely to meet the licence conditions. The inspection must be completed by a suitably qualified inspector present (as well as a veterinarian for the initial inspection of a dog breeding establishment, or a listed veterinarian for inspections of horse riding establishments). The inspector must prepare a report, in accordance with the requirements of regulation 10, to be submitted to the local authority following their inspection.
- The inspector's report will contain information about the operator, any relevant premises, any relevant records, the condition of any animals and any other relevant matter and state whether or not the inspector considers that the licence conditions will be met.
- Ensure that the appropriate fees have been paid, these can include fees for the consideration of the application, the reasonable anticipated costs of consideration of a licence holder's compliance with the Regulations, the reasonable anticipated costs of enforcement in relation to any licensable activity of an unlicensed operator and any costs reasonably anticipated in relation to the provision of information to the Secretary of State.

8. Rating and Licence duration

8.1 Licences can be issued for a period of either one, two or three years depending on the risk rating and level of compliance. This also corresponds

with the Star Rating for the establishment.

8.2 The Scoring matrix is below:

Scoring Matrix		Welfare Standards		
		Minor Failings (existing business that are failing to meet minimum standards)	Minimum Standards (as laid down in the schedules and guidance)	Higher Standards (as laid down in the guidance)
Risk	Low Risk	1 Star 1yr licence Min 1 unannounced visit within 12 month period	3 Star 2yr licence Min 1 unannounced visit within 24 month period	5 Star 3yr licence Min 1 unannounced visit within 36 month period
	Higher Risk	1 Star 1yr licence Min 1 unannounced visit within 12 month period	2 Star 1yr licence Min 1 unannounced visit within 12 month period	4 Star 2yr licence Min 1 unannounced visit within 24 month period

8.3 Licences for the keeping or training animals for exhibition are issued for three years.

9. Standards and Conditions

Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations

- 9.1 The Regulations include mandatory conditions for each licensable activity and DEFRA has produced associated guidance. The conditions are divided into two categories namely General Conditions (stipulated in Schedule 2) and Specific Conditions from the associated Schedule of the Regulations.
- 9.2 Applicants/licence holders will need to meet all the mandatory conditions, although minor failings may be noted/recorded providing they do not compromise the welfare of the animals (these should be predominantly administrative in nature).
- 9.3 For each activity (except keeping or training animals for exhibition) a number of “higher standards” have been included in the guidance. Meeting the higher standards is optional but is the only way to gain a higher star rating.
- 9.4 The higher standards are classified into two categories – required (mandatory) and optional. These will usually be colour coded into blue and red respectively. To qualify as meeting the higher standards the business must achieve all the required (mandatory) standards as well as a minimum of 50% of the optional higher standards.
- 9.5 The Regulations make provision for Officers to take samples for laboratory testing from any animals on premises occupied by an operator for the purposes of ensuring the licence conditions are being complied with. A Licence holder must comply with any reasonable request of an inspector to facilitate the identification and examination of an animal and the taking of

samples and, in particular, must arrange the suitable restraint of an animal if so requested by an inspector.

- 9.6 Samples should be as non-invasive as possible, however inspectors may deem more invasive samples necessary if there are concerns over the welfare of the animals. The provision for sampling is primarily aimed at veterinarians carrying out inspections and it is not expected that samples be taken by those without the training to properly and safely do so.

Additional Expectations of Pet Vendors

- 9.7 The Council recognises the concerns of the RSPCA that primates are not suitable companion animals, as their welfare needs cannot be met in a domestic environment. Consequently, the Policy recommends primates should not be kept or sold by pet vendors within the Guildford Borough area.

Additional Expectations of Pet Vendors and Breeders

- 9.8 There is also additional responsibility placed upon all vendors and breeders to ensure animals are sold to good homes. As such the Council would expect all sellers and breeders to have a procedure that enables them to be confident that customers are able to meet an animal's welfare needs, and are fully aware of their responsibilities under the Animal Welfare Act 2006.

Dangerous Wild Animals

- 9.7 The Council will usually impose Defra's standard conditions, in addition to any premises/animal specific conditions deemed to be required by the Inspecting Officer/Vet.

Zoos

- 9.8 The Council will usually impose Defra's standard conditions, in addition to any premises/animal specific conditions deemed to be required by the Inspecting Officer/Vet.

10. Granting an application

- 10.1 Where a licence is issued the Council will provide the following details:

- the Licence with the Star Rating;
- details of how the business has been rated including a list of the higher standards the business currently fails to meet or a list of the minimum standards the business is failing to meet and resulting in a "minor failing" category;
- a copy of the risk management assessment table;
- details of the appeals process and timescales.

- 10.2 Any fee(s) required upon the grant of the licence must be paid in full prior to the issue of the licence.

11. Refusing Applications

- 11.1 The Council will consider the report from the inspector and any comments made by the applicant when deciding whether to issue a licence.
- 11.2 The Council will refuse to issue a licence if it considers that the applicant cannot meet the licence conditions, for example, if the granting of a licence will have a negative impact on animal welfare or if the level of accommodation, staffing or management is inadequate for the well-being of animals.
- 11.3 The Council will also refuse to issue or renew a licence if the applicant has a history of non-compliance with licensing conditions or requirements, is obstructive towards officers, or if there are safeguarding concerns arising from the licensed activity. The above list is not exhaustive, but indicative of the circumstances where they Council will want to refuse an application.
- 11.4 The Council will also refuse an application if it considers that the applicant does not meet the 'fit and proper person' test.
- 11.5 A licence cannot be issued to an operator who is disqualified.
- 11.6 Any application fees or veterinary inspection fees paid will not be refunded for unsuccessful applications.
- 11.7 If a licence is refused, the applicant will have the right of appeal to a First-tier Tribunal within 28 days of the decision notice.

12. Appeals to Star Rating

- 12.1 To ensure fairness to the business, the Council has an appeals procedure in place for the operator to dispute the star rating given.
- 12.2 The business will be provided with supporting information (the inspection reports) which will highlight the inspecting officer's decision on how the risk rating, compliance level and star rating has been determined. The business is encouraged to discuss the matter initially with the inspecting officer where possible.
- 12.3 A business may appeal if they consider their star rating to be wrong - in other words it does not reflect the standards found at the time of inspection. Any appeal to the rating given must be made in writing within 21 days.
- 12.4 A business may wish to apply for a re-inspection or re-rating on a chargeable basis following completion of works to rectify any non-compliance or improvements to achieve higher standards.
- 12.5 An appeal will be assessed and determined by an appointed manager within the Department, who will conduct a 'desk based' appraisal of the rating given.
- 12.6 The appointed managers for this purpose are the Licensing Team Leader, or Regulatory Services Manager in their absence.

12.7 If the business disagrees with the outcome of the appeal they can only challenge the decision by means of judicial review.

13. Variations, Suspensions and Revocations of Licences

13.1 The Regulations provide for a local authority at any time to vary a licence:

- On the application in writing of the licence holder, or
- On the initiative of the local authority, with the consent in writing of the licence holder.

13.2 In addition to the above a local authority may suspend, vary or revoke a licence without the consent of the licence holder if:

- The licence conditions are not being complied with,
- There has been a breach of the Regulations,
- Information supplied by the licence holder is false or misleading, or
- It is necessary to protect the welfare of an animal.

13.2 A suspension or variation of a licence will normally take effect 7 working days after the decision has been issued to the licence holder unless the reason is to protect the welfare of an animal in which case the local authority may stipulate that the decision has immediate effect.

13.3 A decision to vary or suspend the licence must be notified to the licence holder in writing, explaining the reasons for the decision, and providing information regarding when the suspension or variation comes into effect and the rights of the licence holder to make written representation, as well as any specific changes deemed necessary in order to remedy the situation.

13.4 The decision to vary, suspend or revoke a license will be dependent on the severity of the situation. If an operator fails to meet administrative conditions or provide information when requested then this could potentially lead to the suspension of a licence. If such a scenario happens repeatedly, the Council may consider revocation appropriate. Revocation of a licence will also occur in an instance where poor welfare conditions are discovered or it would otherwise benefit the welfare of the animals involved to be removed from the activity. Variations can occur if adjustments need to be made, whether that is to the licence itself or to the premises/animals referred to in the licence.

13.5 Following the issuing of the notice of suspension or variation, the licence holder will have 7 working days to make written representation. Upon receipt of this the Council will decide whether to continue with the suspension or variation of the licence or cancel the decision.

13.6 If the licence has been altered with immediate effect to protect the welfare of an animal then the Council must indicate that this is the reason.

13.7 The business will not be able to trade once the suspension of a licence has come into effect and cannot do so until the decision is overturned by the local authority upon being satisfied that licence conditions are being met.

13.8 There is no right of appeal against the suspension of a licence. After 28 days of suspension the licence must be revoked or reinstated.

- 13.8 A licence holder may appeal to a First-tier Tribunal if they do not agree with the decision made by the local authority to vary or revoke a licence. This must be done within 28 days of the decision.

14. Transfer of a licence upon the death of a licence holder

- 14.1 If a licence holder dies, the procedure in regulation 12 of the Regulations applies. It allows the personal representative of the deceased to take on the licence provided that they inform the local authority within twenty-eight days of the death that they are now the licence holders. The licence will then remain in place for three months from the death of the former holder or for the rest of the time it was due to remain in force if that time period is shorter. The new licence holder should then apply for a new licence one month before the expiry of this new period.
- 14.2 Additionally the local authority can extend the three month period by up to another three months if requested by the personal representative and if they believe this time is needed to wind up the estate of the former licence holder.
- 14.3 If the personal representative does not notify the local authority within 28 days of the death of the licence holder, the licence will cease to have effect after those 28 days.

15. Inspections During the Course of a licence

- 15.1 There will be cases where inspections must be carried out during the term of a licence.
- 15.2 For the activity of hiring out horses, there is a requirement for an annual inspection by a listed veterinarian, regardless of the total length of the licence. The local authority must appoint a listed veterinarian to inspect the premises on which the activity is being carried out before the end of the first year after the licence is granted and then each subsequent year.
- 15.3 Unannounced inspections can also be carried out and will be used in the case of complaints or other information that suggests the licence conditions are not being complied with or that the welfare of the animals involved in a licensed activity is at risk.
- 15.4 During the course of an inspection the inspector may choose to take samples for laboratory testing from the animals on the premises occupied by an operator. The operator must comply with any reasonable request of an inspector to facilitate the identification, examination and sampling of an animal including ensuring that suitable restraints are provided if requested.
- 15.5 The Council will use a suitably qualified inspector to carry out inspections. The inspector will be assisted and/or accompanied as necessary by the Council's appointed Vet or any other relevant specialist which may be required depending on the nature of the inspection.

15.6 The Council uses a Licensing database to record all licensing and other regulatory actions. This includes inspections and it allows us to maintain a register of inspections and when interim inspections are due.

16. Appointments and Qualifications of Inspectors

16.1 The Council has appointed Inspectors and Veterinarians to carry out duties under the Licensing Regulations and Animal Welfare Act. Details of this are available on request.

16.2 All inspectors must be suitably qualified. This is defined in the Guidance as:

- Any person holding a Level 3 certificate granted by a body, recognised and regulated by the Office of Qualifications and Examinations Regulation which oversees the training and assessment of persons in inspecting and licensing certain animal activities businesses, confirming the passing of an independent examination. A person is only considered to be qualified to inspect a particular type of activity if their certificate applies to that activity;
- Any person holding a formal veterinary qualification, as recognised by the Royal College of Veterinary Surgeons (“RCVS”), together with a relevant RCVS continuing professional development record;

16.3 Further appropriate training for licensing officers on other relevant matters, for example the socialisation and behavioural needs of puppies and dogs at breeding establishments, will be provided where deemed necessary.

17. Fee Structure

17.1 The current level of licence fee will be displayed on the Council’s webpage.

17.2 All fees have been calculated and reviewed annually, taking into account the statutory requirements of Regulation 13, with the aim of full cost recovery.

18. Enforcement

18.1 The Regulations introduce a range of enforcement powers to allow the Council to issue a suspension, variation or revocation notice where licence conditions are not being complied with; there is a breach of the regulations or issues relating to the protection of the welfare of an animal.

18.2 The service of an enforcement notice is subject to a strict process and includes provision for the right to make written representations and/or appeal.

18.3 It is an offence to breach any licence condition. It is also an offence not to comply with an inspector’s request in the process of taking a sample from an animal.

18.4 It is also an offence to obstruct an inspector who has been appointed by a local authority to enforce the Regulations. Committing any of these offences could result in an unlimited fine.

- 18.5 Anyone who carries on any of the licensable activities without a licence is liable to imprisonment for a term of up to six months, a fine or both. Section 30 of the Animal Welfare Act 2006 allows for local authorities to prosecute for any offences under that Act.
- 18.6 The post-conviction power from section 34 of the Animal Welfare Act 2006 is in place whereby a person convicted of an offence under the Act or Regulations may be disqualified from owning, keeping, participating in the keeping of animals and/or from being party to an arrangement under which they can control or influence the way an animal is kept. They may also be disqualified from transporting or dealing in animals. Breaching these disqualifications is an offence.
- 18.7 The post-conviction power from section 42 of the Animal Welfare Act is also in place whereby a court can cancel a currently existing licence and disqualify a person from holding a licence for any period it sees fit when that person is convicted of an offence under the Act or Regulations.
- 18.8 The Council works closely with partners in accordance with a locally established joint enforcement protocol and will aim to promote the welfare of animals and safety of the public.
- 18.9 The main enforcement and compliance role for the Council in terms of the Regulations will be to ensure compliance with the conditions placed upon the licence and investigate and take appropriate action on unlicensed premises.
- 18.10 The Council will log and investigate as it considers necessary all complaints relating to Animal Establishments which are currently licensed or may require a licence. The Council will require complainants to provide their name and contact details so as to ensure that a complaint is not malicious in nature, and so that witness evidence may be obtained if required for further action. When investigating complaints officers will take care to not reveal the identity of the complainant, unless the complainant has agreed otherwise, or unless it is necessary for the progression of legal proceedings.
- 18.11 In addition to the investigation of complaints, the Council will monitor and gather information about unlicensed activities using all available sources of information; for example, unlicensed puppy breeders or pet sellers advertising online, that could fall within the scope, and to proactively approach, and if appropriate licence, those involved in such activities.
- 18.12 We aim to achieve and maintain a consistent approach when we investigate complaints, carry out inspections and make our decisions. In reaching any decision we will consider the following criteria:
- seriousness of any offences or breach of conditions
 - operator's past history
 - consequence(s) of non-compliance
 - likely effectiveness of the various enforcement options
 - danger to the welfare of animals and/or public

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18.13 In carrying out its enforcement duties with regards to the inspection of premises, the variation, suspension or revocation of licences, investigation of complaints and the powers to institute criminal proceedings in respect of certain offences under the Act, the Council has adopted an enforcement policy, which is available on www.guildford.gov.uk.



PawPrints 2022

Criteria

This document contains the criteria and evidence required for the RSPCA's PawPrints awards in 2022. There are five categories; stray dogs, housing, contingency planning, animal activity licensing, and kennelled dogs. Each category has a different set of criteria and evidence required. There are three levels for each category; bronze, silver and gold. The criteria apply to entry submissions from both England and Wales unless otherwise specified. Each category can be accessed by clicking one of the links below. Your submission will be marked and moderated by the RSPCA's Public Affairs team.

The entry period will open on Friday 24 June and close on Friday 19 August 2022. The winners will be announced by email on Wednesday 28th September.

When the entry period opens, you will be provided with a link to a form to make your submission. There will be further information on the Political Animal Website (PAW). If you require any further information or assistance, or you have questions, please contact Lee Gingell (lee.gingell@rspca.org.uk).

[STRAY DOGS](#)

[HOUSING](#)

[CONTINGENCY PLANNING](#)

[ANIMAL ACTIVITY LICENSING](#)

[KENNELLED DOGS](#)

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STRAY DOGS

Level	Criteria	Evidence req.
Bronze	Dog handling, welfare and behaviour training for all officers responsible for stray dog collection (including holiday and sickness cover). Training should represent an up-to-date understanding of dog welfare, including the use of ethical, reward-based methods.	<i>Proof of completion of relevant training from a reputable training provider and detail of the content. Content should represent an up to date understanding of dog welfare, particularly in reference to ethical and reward-based training.</i>
	Procedure in place to get treatment for injured and sick stray dogs efficiently and humanely, including those found by the public. This should also include clear procedures to ensure cover for staff sickness and holidays, as well as disease outbreaks.	<i>The relevant section of written policy and procedural document.</i>
	Procedure in place to scan (and/or check for other identification) all stray dogs collected or received by the local authority and reunite those that have an up to date microchip (and/or other identification) with their owner.	<i>The relevant section of written policy and procedural document.</i>
	Procedure in place to scan or check dead dogs (and cats and other pets) for microchips and other forms of identification.	<i>The relevant section of written policy and procedural document.</i>
	The council or contractor's stray dog kennels and out-of-hours reception centre have clear facilities, protocols and procedures that meet the five welfare needs, defined under section 9 of the Animal Welfare Act 2006.	<i>Details of relevant facilities, the relevant section of written policy and procedural documents.</i>
	Staffed out-of-hours kennels/reception centre.	<i>Details of out-of-hours facilities, including staffing levels and operating hours.</i>
	Information provided to owners reclaiming strays on how to prevent the animal from straying again and the legal requirement to microchip and that details must be kept up to date.	<i>Examples of information and materials (eg leaflets, web links) provided to reclaiming owners.</i>
	Records kept, and regularly updated, of all strays received and how they were disposed of. These records should include the number of dogs returned, rehomed, euthanased on medical grounds, euthanased on non-medical grounds and if a dog can't be reunited with its owner	<i>Example of records (a blank template is fine).</i>

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	because they weren't chipped or the chip details were inaccurate.	
Silver (all of bronze, plus:)	A clear rehoming policy for kennels to ensure all dogs rehomed are assessed – behaviorally and physically – and permanently identified, and that potential new owners are vetted. The policy should apply to any third-party kennels that the council may use after the statutory seven-day period. Where rehoming is not possible, clear evidence must be provided to demonstrate that efforts have been made to address this.	<i>The relevant section of the written policy.</i>
	Active promotion through the council website and leaflets of the legal requirement for a microchip and that details must be kept up to date, neutering and the duty of care to ensure the five welfare needs under section 9 of the Animal Welfare Act 2006.	<i>Example of leaflet and/or web link.</i>
	Compulsory microchipping of all stray dogs without such identification before being returned to owners or rehomed.	<i>The relevant section of written policy and procedural document.</i>
Gold (all of bronze and silver, plus:) Page 57	Provision of an out of hours service that meets the requirements of the local community to ensure animal welfare. This should include evening and weekend provisions where dogs can be collected or deposited by members of the public.	<i>Details of out-of-hours service provision, the relevant section of written policy and procedural document and an evidence-based explanation of how this level of service meets local needs. (If you have evidence which shows contingency planning in the event that out of hours kennels become full, we would welcome seeing this - although not a requirement yet).</i>
	Regular proactive work to encourage responsible pet ownership, which may include public awareness campaigns and events on a range of issues, e.g. microchipping, neutering, dogs in warm weather, etc.	<i>Example(s) of such work during the past year (because of the impact of COVID-19 restrictions and the changing nature of how we work, we will accept evidence of visits which took place during or scheduled for after this year's entry period, including both in-person and virtual visits).</i>

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HOUSING

Level	Criteria	Evidence req.
Bronze	<p>A clear and positive written policy for all housing controlled or influenced by the local authority or housing associations. The following should be a part of the policy:</p> <ol style="list-style-type: none"> 1. Clearly defined guidance, with some flexibility to allow requests to keep pets on a case-by-case basis where the owner can meet the animal's welfare needs. 2. Details of the owner's responsibility and a definition of which species of animal and how many are allowed. It should not discourage pet ownership where facilities exist for proper care. 3. A clear procedure for managing complaints and the concerns of both pet owners and neighbours regarding nuisance animals, welfare, health or cruelty issues. 4. A ban on business activity involving the breeding and/or vending of animals on the premises. The policy should also discourage non-commercial breeding. 	<i>Relevant section(s) of written policy and procedural documents.</i>
	A list of local, reputable animal welfare and veterinary organisations made available to residents, including those which may offer reduced cost or free veterinary treatment and services.	<i>A copy of this list or a link to where it can be found.</i>
Silver (all of bronze, plus:)	Written pet care advice/information by, or approved by, a recognised and reputable animal welfare source made available to residents on registering their pets in the accommodation.	<i>Examples of this advice and information.</i>
	The active promotion of permanent identification and neutering of pets.	<i>Examples of this in practice, including when last carried out (because of the impact of COVID-19 restrictions and the changing nature of how we work, we will accept evidence from during or scheduled for after this year's entry period)</i>
	A register of all animals kept in each dwelling, which is kept and updated as required.	<i>Details of your register with an example record if possible (a blank template is acceptable)</i>

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	A proportionate response to prohibited types of dogs (i.e. those prohibited under the Dangerous Dogs Act 1991) which allows dogs on the Index of Exempted Dogs (IED) who are legally owned to be kept within properties as long as the owner continues to comply with the exemption conditions.	<i>The relevant section of written policy and procedural document.</i>
Gold (all of bronze and silver, plus:)	Provision for the pets of owners in temporary or emergency housing.	<i>The relevant section of written policy and procedural document.</i>
	Provision of discounted permanent ID for pets and a neutering discount to prevent unwanted breeding.	<i>Examples of this work, including when last carried out (because of the impact of COVID-19 restrictions and the changing nature of how we work, we will accept evidence from during or scheduled for after this year's entry period)</i>
	An established link with a recognised and reputable animal welfare organisation that provides residents with advice on pet care on request or by monthly or quarterly visits.	<i>Example of this work and when last carried out (because of the impact of COVID-19 restrictions and the changing nature of how we work, we will accept evidence of visits which took place during or scheduled for after this year's entry period, including both in-person and virtual visits)</i>

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CONTINGENCY PLANNING

Level	Criteria	Evidence req.
Bronze	Locations identified as temporary animal shelters with a pet evacuation plan.	<i>The relevant section of written policy and procedural document, including details of temporary animal shelters.</i>
	Information on the website for pet owners that promotes preparedness, or a link to another website that does.	<i>A link to this information.</i>
	The establishment of a contact list of reputable animal welfare organisations and local vets who can assist in an emergency situation, and liaison with these.	<i>A copy of this list or a link to where it can be found and a brief explanation of what assistance the organisations will be able to provide in an emergency.</i>
	Companion animal welfare is included in written contingency plans.	<i>The relevant section of written policy and procedural documents.</i>
Silver (all of bronze, plus:)	The involvement of reputable animal welfare organisations in contingency exercises and planning meetings.	<i>Example(s) of meetings/exercises where a relevant organisation has attended (because of the impact of COVID-19 restrictions and the changing nature of how we work, we will accept evidence of exercises/meetings which took place during or scheduled for after this year's entry period, including both in-person and virtual exercises/meetings)</i>
	Support for establishments involved with large numbers of animals in drawing up their contingency plans.	<i>Example(s) of relevant guidance document or other support offered.</i>
	The running of at least one tabletop exercise every two years specifically involves a companion animal welfare element.	<i>Details and date of exercise (if this has been made impossible due to Covid-19 restrictions please specify this in your evidence. We will accept evidence of exercises which are due to take place during or scheduled for after</i>

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		<i>this year's entry period).</i>
	Evidence that advice is provided, by the local authority, to allotment holders (where applicable) concerning the care of any animals in an emergency scenario.	<i>Example of advice.</i>
Gold (all of bronze and silver, plus:)	The Ownership of, or access to, at least 50 kennel spaces or vari-kennels between members of the LRF, for use in an emergency.	<i>Details of ownership or access to kennel space.</i>
	Proactive work, such as an awareness campaign, to ensure pet owners are prepared should they be evacuated.	<i>Examples of this work, such as a link to online material or details of a relevant event.</i>
	At least one live exercise every three years specifically involving a companion animal welfare element. This will help operational staff to be more flexible when setting up an emergency reception centre.	<i>Details and date of exercise (if this has been made impossible due to Covid-19 restrictions please specify this in your evidence. We will accept evidence of exercises which are due to take place during or scheduled for after this year's entry period).</i>

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ANIMAL ACTIVITY LICENSING

Level	Criteria	Evidence req.
Bronze	A clear policy on and procedures for how to license animal activities.	<i>Written policy and procedural documents.</i>
	A clear procedure for dealing with complaints from members of the public about licensed animal activities.	<i>The relevant section of written policy and procedural document.</i>
	Clear procedures to ensure inspections are carried out on time, with the required contingent of people.	<i>Relevant section of the procedural document, including information about who attends inspections.</i>
	A list of appropriately qualified experts, for example, vets, behaviour experts and animal welfare organisations that can be consulted for advice on specific requirements, which can be made available to licensing officers.	<i>A copy of this list.</i>
	The recognition that primates are not suitable companion animals, as their welfare needs cannot be met in a domestic environment, in the form of the adoption of a policy that recommends primates should not be kept or sold by pet vendors within the local authority area.	<i>The relevant section of written policy.</i>
	WALES ONLY: A clear training procedure for licensing officers to ensure they can deliver their duties competently and have an understanding of the relevant legal standards as found in The Animal Welfare (Licensing of Activities Involving Animals) (Wales) Regulations 2021 and The Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014 and best practice, and how they dovetail with the Animal Welfare Act 2006.	<i>Certificates of completion or upcoming bookings for relevant courses. Participation in the Welsh Government's local authority enforcement project.</i>
Silver (all of bronze, plus:)	Active promotion, through the council website and leaflets, of microchipping, neutering and the duty of care to meet the welfare needs under section 9 of the Animal Welfare Act 2006.	<i>A link to the relevant page on the council website.</i>
	Further appropriate training for licensing officers on the socialisation and behavioural needs of puppies and dogs at breeding establishments.	<i>Example of relevant training attended or an upcoming booking.</i>

Agenda item number: 5(1)
Appendix 3

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Gold (all of bronze and silver, plus:)	PET VENDORS AND DOG BREEDING ESTABLISHMENTS: Clear written protocol for a procedure that enables vendors to be confident that customers are able to meet an animal's welfare needs, and are fully aware of their responsibilities under the Animal Welfare Act 2006.	<i>Example of guidance or information provided to vendors.</i>
	A clear written procedure for taking a prosecution forward, with examples if possible.	<i>The relevant section of written policy and procedural document, examples of any prosecutions taken</i>
	Clear process to monitor and gather information about unlicensed activities, for example, unlicensed puppy breeders, that could fall within the scope, and to proactively approach, and if appropriate licence, those involved in such activities.	<i>The relevant section of written policy and procedural document, an example of licensing or other subsequent enforcement activity as appropriate.</i>

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KENNELLED DOGS

Required documentation:

[General Points of Good Practice - MUST](#)

[General Points of Good Practice - SHOULD](#)

Agenda item number: 5(1)
Appendix 3

Level	Criteria	Evidence req.
Bronze	Provisions of Section 9 of the Animal Welfare Act are met and in accordance with the RSPCA guide to good practice - the welfare of seized dogs in kennels	<i>Checklist of all General Points of Good Practice Musts is completed and evidence of how they meet at least two of the musts per welfare need is to be provided.</i>
Silver (all of bronze, plus:) Page 64	Best practice is being met and in accordance with the RSPCA guide to good practice - the welfare of seized dogs in kennels	<i>Checklist of all General Points of Good Practice Musts and Shoulds is completed and evidence of how they meet at least two of the musts and shoulds per welfare need is to be provided.</i>
	A contract/policy which ensures compliance with provisions of section 9 of the Animal Welfare Act 2006.	<i>Copy of contract or policy document.</i>
	Additional provisions are in place for the management of puppies e.g. use of fosterers or other agencies	<i>Information about the management of puppies.</i>
Gold (all of bronze and silver, plus:)	A working relationship with i.e. regular visits to the kennels by a suitably qualified and experienced behaviour expert.	<i>A document which illustrates the working relationship and regular visits by the behaviour expert</i>
	Other initiatives which have been implemented solely to improve the welfare of kennelled dogs e.g. specific environmental enrichment programmes, provision of reward-based training etc.	<i>Details about initiatives e.g. details about enrichment programme, training provider etc</i>

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Formal Response to Guildford Borough Council - Animal Licensing Policy Consultation

Submitted on 3rd August 2023 by: The Kennel Club, 10 Clarges Street, London W1J 8AB

The Kennel Club is the largest organisation in the UK devoted to dog health, welfare, and training. Our objective is to ensure that dogs live healthy, happy lives with responsible owners.

Business test

It is our view that the proposed changes to the Animal Welfare Licensing Policy, specifically the new policy in relation to the business test do not appropriately reflect Government guidance or the Government's stated scope of the legislation.

The Council's proposal in relation to the trading income allowance (para 5.10), fails to reflect what is contained within the Government's statutory guidance.

Which reads as follows -

"If someone has a trading income below the HMRC trading income allowance, they do not require a licence for their activities.

If someone has a trading income above the HMRC trading income allowance, they do not automatically qualify as a business."

The Government's guidance is explicit those under the trading income allowance do not require a licence, while being over it doesn't automatically indicate a licence is required. We do not believe that this is appropriately reflected within the Council's draft licensing policy.

Furthermore, we believe that the draft licensing policy in relation to the business test does not appropriately take into account the Government's position in relation to licensing of hobby breeders.

In March 2023, the Government was asked the following parliamentary question¹ - "To ask the Secretary of State for Environment, Food and Rural Affairs, what assessment her Department has made of the impact of dog breeding regulations on breeders who breed two or fewer litters per year."

The formal response of the Government was as follows – "Under The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 (the 2018

¹ Parliamentary question - <https://questions-statements.parliament.uk/written-questions/detail/2023-03-28/175624>



Regulations) anyone in the business of breeding and selling dogs and/or who breeds three or more litters in a twelve-month period needs to have a valid licence from their local authority.

The 2018 Regulations are targeted at businesses and individuals/operators which operate on a commercial basis. They are not intended to capture or regulate hobby breeders. We are currently conducting a post-implementation review of the 2018 Regulations which will consider the need for any refinements in light of evidence provided by stakeholders, licensed and unlicensed dog breeders, and local authorities.”

The Government has been clear that it is not the intention of the dog breeding legislation to regulate hobby breeders. The Government’s statutory guidance reflects this position that hobby breeders, breeding under the litter threshold, are not required to be licensed. With the following points contained within the dog breeding and pet vending guidance –

‘Business test’ statutory guidance within dog breeding section -

“You should consider these factors when determining whether someone is ‘advertising a business’:

- high volumes of animals sold or advertised for sale could indicate a business
- high range and variability in the breeds traded - a wide variety of breeds being advertised could indicate the commercial nature of the activity
- the sale of animals with non-UK documentation or microchip could indicate commercial activity”

A one or two litter hobby breeder will not meet these criteria.

Furthermore, the guidance contained within the pet vending guidance, for which the same statutory test is in place, is clearer still -

“Activities that fulfil one or more of the following criteria do not require a licence:

- selling a small number of surplus offspring or excess stock from animals bred as a hobby, for pleasure, exhibition for prize, or for education, study or scientific advancement and for low value species that may produce large numbers of excess stock, consider the value of the stock and the likelihood that the seller is making a profit

An operator is not likely to be selling animals as pets as a commercial business and will not need a licence if they can demonstrate:

- their transactions are irregular, with low numbers, frequency or volume of sales or adverts
- they sell animals as a hobby, for education or scientific advancement, and that they sell only surplus stock, not for profit - evidence could include reports or studies about the



species published in scientific journals, pet trade or hobby media or self-published, contributions to conservation projects, competition entry forms, or membership of a relevant club or society”

We would urge the council to better reflect the Government’s position in relation to the ‘business test’ and its applicability to hobby breeders, operating under the licensing threshold.

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Licensing Committee Report

Ward(s) affected: All Wards

Report of the Joint Strategic Director for Place

Author: Mike Smith, Senior Specialist for Licensing and Community Safety

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Lead Councillor responsible: Merel Rehorst-Smith

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Date: 27 September 2023

Extension to Pavement Licensing

Executive Summary

The Business and Planning Act 2020 enacted in July 2020 sought to assist the hospitality industry recover from the first Covid19 'lockdown' by making it easier for premises serving food and drink such as bars, restaurants and pubs to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing. The legislation was introduced with an original end date of 30 September 2021.

On 23 September 2020 Licensing Committee considered a report and agreed a Policy concerning the Pavement Licensing function. The Policy was agreed with an end date in line with the legislation.

This temporary legislation was continued in both 2021 and 2022 with further statutory instruments extending the provisions for a further year, pending the creation of a permanent new Pavement Licensing regime under the Levelling Up and Regeneration Bill. It was anticipated that a permanent regime would be created in 2023 however this has not been possible and on 17 July 2023 the Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2023 were signed in to law. This effectively extends the temporary Pavement Licence legislation for a further year on the same basis as currently.

As the current Pavement Licensing Policy is due to expire on 30 September 2023, this report asks Licensing Committee to agree to its extension for a further year.

Recommendation Committee

That the Committee notes the extension of the Business and Planning Act for the Licensed trade, and subject to the passing of the necessary Statutory Instrument, Approves the extension of the current Pavement Licensing Policy at Appendix 1 for a further 12 months.

Reason(s) for Recommendation:

Approval of the policy will assist the Council with consistent decision making and provide guidance for applicants.

Is the report (or part of it) exempt from publication?

No

1. Purpose of Report

- 1.1 The purpose of this report is to brief the Licensing Committee on the extension of the Business and Planning Act (the Act), which came into force on 22 July 2020, and to approve an extension to the current Policy for determining Pavement Licence applications issued under the Act.

2. Strategic Priorities

- 2.1 The Pavement Licensing Policy will contribute to our fundamental themes as follows:
 - **Homes and Jobs** – regenerating and improving Guildford town centre and other areas across the Borough through well-regulated licensed establishments.
 - **Environment** – enhancing recreational facilities through well-regulated licensed establishments.

- **Key Programmes** – Regenerating Guildford Town Centre creating employment opportunities and high quality public spaces.

3. Background

- 3.1 On 25 June 2020, the Government announced relaxations to planning and licensing laws to help the hospitality industry recover from the coronavirus lockdown. The Business and Planning Act received Royal Assent on 22 July 2020 and came into force immediately. It introduced measures to make it easier for premises serving food and drink such as bars, restaurants and pubs to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing.
- 3.2 The legislation was set to expire on 30 September 2021 but has been extended until 30 September 2023 in order to further support the sector.
- 3.3 Furthermore, under the Levelling Up Bill the Government has also committed to making the Pavement Licence regime (issued by Districts and Boroughs) permanent.
- 3.4 However, whilst the Levelling Up Bill makes its way through Parliament, on 17 July 2023 a Statutory Instrument was laid to extend the current regime for a further 12 months.
- 3.5 In order to provide guidance for applicants and a framework for consistent decision making, a Policy concerning the Pavement Licensing function was approved by Licensing Committee on 23 September 2020 and subsequently extended to September 2023.
- 3.6 The Pavement Licence process has proven popular in Guildford, with currently 34 Licences in effect.

4. Consultations

- 4.1 The Policy covers the temporary permissions for Pavement Licences under the Business and Planning Act 2020, which were originally scheduled to expire on 30 September 2021 but have now been extended.
- 4.2 The Policy was drafted in consultation with the consultees listed in section 3.3 of the Policy and consulted upon with the appropriate lead councillors and the Leader of the Council at the time of adoption. Following its use in determining applications received since its adoption officers do not believe that the Policy requires further review at this time.
- 4.3 Feedback received during the current operation of the Policy have not given Officers any cause to make any changes, which provides a framework for consistent decision making.

5. Key Risks

- 5.1 Not having a Policy concerning Pavement Licensing may lead to inconsistent decision making and potential legal challenge to the Council.

6. Financial Implications

- 6.1 The Business and Planning Act was introduced to support the hospitality industry to recover from the coronavirus pandemic. Many of these businesses are licence fee payers under the Licensing Act 2003.
- 6.2 The application fee for Pavement Licensing is capped by legislation at £100 and it is unlikely that the full costs of setting up the function, processing of applications and enforcement of licences will be recovered through the fee.

- 6.3 The Council has however received a new burdens payment contribution to assist with the costs of implementing the legislation.

7. Legal Implications

- 7.1 There is no statutory requirement to have a Pavement Licensing Policy, although having a transparent Policy guides applicants and enables consistent decision making.

8. Human Resource Implications

- 8.1 The introduction of Pavement licensing administered by Guildford Borough Council has required Licensing officers to divert and prioritise resources into setting up and administering this regime.

9. Equality and Diversity Implications

- 9.1 Under the public sector equality duty as set out in the Equality Act 2010, public authorities are required to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation as well as advancing equality of opportunity and fostering good relations between people who share a protected characteristic and those who do not.
- 9.2 The protected grounds covered by the equality duty are: age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief, and sexual orientation. The equality duty also covers marriage and civil partnership, but only in respect of eliminating unlawful discrimination.
- 9.3 The law requires that this “duty to have due regard” be demonstrated in decision making processes. Assessing the potential impact on equality of proposed changes to policies, procedures and practices is one of the key ways in which public authorities can demonstrate that they have had due regard to the aims of equality duty.

- 9.4 The Act requires authorities to have regard to the needs of disabled people when considering whether to grant a pavement licence. Adopting a Policy will assist in this decision making.

10. Climate Change/Sustainability Implications

- 10.1 Potential effects of litter arising from an increase in outside food and beverage consumption can be managed via conditions attached to Pavement Licences. The Act requires Licence holders to make reasonable provision for outside seating where smoking is not permitted.

11. Summary of Options

- 11.1 After considering the report, the Committee may either:
- Approve an extension of the current Policy at Appendix 1, or
 - Approve an extension of the current Policy at Appendix 1 with amendments.

12. Conclusion

- 12.1 The Covid-19 pandemic affected businesses across the economy causing many to cease trading for several months while others have had to significantly modify their operations. Unfortunately some businesses have not reopened. For the hospitality industry the measures in the Business and Planning Act have provided some much-needed flexibility as they seek to reopen fully following Covid and social distancing requirements.
- 12.2 The Pavement Licence has proven successful to the extent that the government has further extended the legislation and consequently a request is made of the Committee to approve an extension of the current policy.

13. Background Papers

13.1 [The Business and Planning Act](#)

13.2 [Ministry of Housing, Communities and Local Government - Guidance: Pavement Licences](#)

13.3 [The Business and Planning Act 2020 \(Pavement Licences\) \(Coronavirus\) \(Amendment\) Regulations 2021](#)

13.4 [Ministry of Housing, Communities and Local Government – Build Back Better High Streets](#)

14. Appendices

Appendix 1 – Guildford Borough Pavement Licensing Policy 2020-24

Please ensure the following service areas have signed off your report. Please complete this box and do not delete.

<i>Service</i>	<i>Sign off date</i>
<i>Executive Head of Regulatory Services</i>	<i>8 August 2023</i>
<i>Finance / S.151 Officer</i>	
<i>Legal / Governance</i>	
<i>HR</i>	
<i>Equalities</i>	
<i>Lead Councillor</i>	
<i>CMT</i>	
<i>Committee Services</i>	

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GUILDFORD
BOROUGH



Pavement Licensing Policy 2020-24



Effective: (23 September 2020)
Version 4 – Updated for extension of legislation
8 August 2023

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1. Introduction

The COVID-19 pandemic has affected businesses across the economy causing many to cease trading for several months while others have had to significantly modify their operations.

As the economy starts to re-open, on 25 June 2020 the Government announced a further and urgent relaxation to planning and licensing laws to help the hospitality industry recover from the coronavirus lockdown by removing some requirements and expediting others.

The Business and Planning Act 2020 makes it easier for premises serving food and drink such as bars, restaurants and pubs, as lockdown restrictions are lifted but social distancing guidelines remain in place, to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing.

The measures included in the Act modify provisions in the Licensing Act 2003 to provide automatic extensions to the terms of on-sales alcohol licences to allow for off-sales. It will be a temporary measure to boost the economy.

The Act also introduces a temporary fast-track process for these businesses to obtain permission, in the form of a “pavement licence”, from Guildford Borough Council for the placement of furniture such as tables and chairs on the pavement outside their premises which will enable them to maximise their capacity whilst adhering to social distancing guidelines.

Currently, tables and chairs permissions are granted as Pavement licences by Surrey County Council, the Highways Authority, under Part 7A of the Highways Act 1980. The fee varies between local authorities and there is a 28 day consultation period.

The new temporary measure places a cap on the application fee for businesses, and introduces a new 14-day determination period, ensuring that businesses can obtain licences in a timely and cost effective manner aiding their financial recovery.

The original Pavement Licensing provisions were set to expire on 30 September 2020 however have been extended further, until 30 September 2024.

2. Scope

2.1 Definition of pavement café

A pavement licence is a licence granted by the local authority, or deemed to have been granted, which allows the licence-holder to place removable furniture over certain highways adjacent to the premises in relation to which the application was made, for certain purposes.

2.2 Eligible Businesses

A business which uses (or proposes to use) premises for the sale of food or drink for consumption (on or off the premises) can apply for a licence. Businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours.

A licence permits the business to use furniture placed on the highway to sell or serve food or drink and/or allow it to be used by people for consumption of food or drink supplied from, or in connection with the use of the premises.

2.3 Eligible Locations

Licences can only be granted in respect of highways listed in section 115A(1) Highways Act 1980.

Generally, these are footpaths restricted to pedestrians or are roads and places to which vehicle access is restricted or prohibited. Highways maintained by Network Rail or over the Crown land are exempt (so a licence cannot be granted).

2.4 Type of furniture permitted

The furniture which may be used is:

- counters or stalls for selling or serving food or drink;
- tables, counters or shelves on which food or drink can be placed;
- chairs, benches or other forms of seating; and
- umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink.

This furniture is required to be removable, which in principle means it is not a permanent fixed structure, and is able to be moved easily, and stored away of an evening.

The Council would also expect the type of furniture to be 'in keeping' with the local area.

2.5 Planning Permission

Once a licence is granted, or deemed to be granted, the applicant will also benefit from deemed planning permission to use the land for anything done pursuant to the licence while the licence is valid.

2.6 Interaction with Part 7A of the Highways Act 1980

Part 7A of the Highways Act 1980 already provides a mechanism for local authorities to grant businesses permission to place objects or structures on the highway for any of the following:

- (i) for a purpose which will result in the production of income;
- (ii) for the purpose of providing a centre for advice or information; or
- (iii) for the purpose of advertising.

In Guildford Borough Council's area, permissions to put tables and chairs on the highway under Part 7A of the Highways Act 1980 are dealt with by Surrey County Council Highways.

The new pavement licence regime runs alongside the provisions in Part 7A of the Highways Act 1980, which remain in place.

Any existing permissions issued under Part 7A of the Highways Act 1980 remain valid.

3. Application and Determination of Pavement Licences

3.1 Submission of the Application

An application for a Pavement Licence must be made to the Council, and the following will be required to be submitted with the application:

- a completed Application Form
- the required fee of £100, paid by credit or debit card
- proof of the applicant's identity and right to work
- a plan showing the location of the premises shown by a red line, so the application site can be clearly identified
- a plan clearly showing the proposed area covered by the licence in relation to the highway, if not to scale, with measurements clearly shown. The plan must show the positions and number of the proposed tables and chairs, together with any other items that the applicant wishes to place on the highway. The plan shall include clear measurements of, for example, pathway width/length, building width and any other fixed item in the proposed area.
- the proposed days of the week on which, and the times of day between which, it is proposed to put furniture on the highway,
- the proposed duration of the licence (for e.g. 3 months, 6 months, or a year);
- photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied for;
- (if applicable) reference of existing pavement licence currently under consideration by the local authority;
- (if applicable) evidence of consent from neighbouring frontager(s) to use footway space outside their property
- evidence that the applicant has met the requirement to give notice of the application (for example photographs of the notice outside the premises and of the notice itself);
- a copy of a current certificate of insurance that covers the activity for third party and public liability risks, to a minimum value of £10 million, and
- any other evidence needed to demonstrate how the Council's local conditions, and any national conditions will be satisfied.

3.2 Fees

The fee for applying for a licence under the new process is set locally but is capped at £100. Using the established methodology the Council has determined that the fee for applications will be £100.

Application fees must accompany the application in order for the application to be considered valid and for the consultation period to commence.

The fee is an 'application' fee for the processing of the application. The fee will not be refunded if the application is withdrawn, refused or if a licence is surrendered or revoked before expiration.

3.3 Consultation

Applications are consulted upon for 7 days, starting with the day after the day on which a valid application was made to the Council.

The Council will publish details of the application on its website at www.guildford.gov.uk/pavementcafe

The Council is required by law to consult with the Highways Authority. In addition, to ensure that there are no detrimental effects from the application the Council will consult with:

- Guildford Borough Council Economic Development
- Guildford Borough Council Regulatory Services (including Environmental Control and Food and Safety Teams)
- Guildford Borough Council Estate Management
- Guildford Borough Council Parking
- Guildford Borough Council Planning
- Guildford Borough Council Street Scene Team
- Guildford Borough Council Town Centre Management
- Surrey Fire & Rescue Service
- Surrey Police
- The appropriate Local Ward Councillor(s)
- The appropriate Parish or Town Council
- The Guildford Business Improvement District

Members of the public and others listed above can contact the Council to make representations.

The Council must take into account representations received during the public consultation period and consider these when determining the application.

3.4 Site Notice

An applicant for a pavement licence must on the day the application is made, fix a notice of the application to the premises so that the notice is readily visible to, and can be read easily by, members of the public who are not on the premises. The notice must be constructed and secured so that it remains in place until the end of the public consultation period. Evidence of compliance with the site notice requirement must be supplied to the Council. The Council would also expect the applicant serves a copy of the site notice on immediate neighbours to make them aware of the application.

The Site Notice must:

- state that the application has been made and the date on which it was made;
- state the statutory provisions under which the application is made;
- state the address of the premises and name of the business;
- describe the proposed use of the furniture;
- indicate that representations relating to the application may be made to the Council during the public consultation period and when that period comes to an end;
- state the Council's website where the application and any accompanying material can be viewed during the consultation period;
- state the address to which representations should be sent during the consultation period; and
- the end date of the consultation (7 days starting the day after the application is submitted to the authority).

A template Site Notice is shown as Appendix 1.

3.5 Site Assessment

The following matters will be taken into account by the Council in considering the suitability of the proposed application:

- public health and safety – for example, ensuring that users conform with latest guidance on social distancing and any reasonable crowd management measures needed as a result of a licence being granted and businesses reopening;
- public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour, excessive noise and litter; and
- accessibility – taking a proportionate approach to considering the nature of the site in relation to which the application for a licence is made, taking account of:
 - any other temporary measures in place that may be relevant to the proposal, for example, the reallocation of road space. This could include pedestrianised streets and any subsequent reallocation of this space to vehicles,
 - whether there are other permanent street furniture or structures in place on the footway that already reduce access,
 - the impact of access and egress to the premises
 - the impact on any neighbouring premises
 - the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of [Inclusive Mobility](#), and
 - other users of the space, for example if there are high levels of pedestrian or cycle movements.

Applicants are strongly encouraged to talk to neighbouring businesses and occupiers prior to applying to the local authority, and take any issues around noise, and nuisance into consideration as part of the proposal.

3.6 Determination

Once the application is submitted the Council has 14 days from the day after a valid application is made (excluding public holidays) to consult on and determine the application. This consists of 7 days for public consultation, and then 7 days to consider and determine the application after the consultation period has ended.

If the local authority determines the application before the end of the determination period, the local authority can:

- grant the licence in respect of any or all of the purposes specified in the application,
- grant the licence for some or all of the part of the highway specified in the application,
- impose conditions on any licence granted, or
- refuse the application.

If the local authority does not determine the application within the 14 day period, the application will be deemed to have been granted subject to any published local or national conditions.

3.7 Approval of Applications

Guildford Borough Council supports the aims of the Business and Planning Act and wishes to help promote economic recovery and growth in its area and will therefore seek to grant applications for licences where possible.

However this aim has to be balanced with the need to ensure the issuing of pavement licences does not put public health or safety at risk, does not lead to antisocial behaviour or public nuisance and ensures that the public, particularly those with disabilities such as sight impairment are unhampered when walking along streets.

The Council will consider the criteria contained within these guidelines in determining applications and will treat each case on its merits.

On approving the application, the Council will issue a Pavement Café Licence to which conditions will be attached. The licence will also contain specific terms such as days and hours when tables and chairs are permitted and appearance and location of the furniture corresponding to the application.

A copy of the Council's standard conditions, which will be attached to all Pavement Café Licences are shown at Appendix 2. Additional conditions may be attached if the Council considers it appropriate in the circumstances of any particular case.

The Council generally will only permit Pavement licences between 09:00 and 22:00.

Applications outside these hours will be assessed in terms of the criteria detailed above. The Council however retains the right to specify permitted hours of trading that are less than those specified above in appropriate circumstances.

3.8 Licences Deemed to be Granted

The Council aims to determine all applications within the determination period provided by the Act. That means that applications will be granted or refused within the period of 7 days beginning with the first day after the public consultation period.

If the Council does not make a determination by the end of the determination period, section 3 (8) of the Act provides that the licence for which the application was made is deemed to be granted by the Council to the applicant.

3.9 Licence Duration

If the Council determines an application before the end of the determination period (which is 7 days, beginning with the first day after the end of the public consultation period, excluding public holidays) the duration of the licence will be specified, subject to a minimum duration of 3 months.

The expectation from the Government is that local authorities will grant licences for 12 months or more unless there are good reasons for granting a licence for a shorter period, such as plans for future changes in use of road space. As such, the Council will normally grant applications for 12 months.

If a licence is 'deemed' granted because the authority does not make a decision on an application before the end of the determination period, then the licence will be valid for a year.

3.10 Refusal of Applications

If the site is deemed unsuitable for a Pavement licence, or if relevant representations are made which cannot be mitigated by imposing conditions, then the application may be refused.

The Council may refuse an application on other grounds including (but not limited to) where the granting of the licence would put at risk public health or safety, lead to antisocial behaviour or public nuisance or unreasonably hamper pedestrian's ability to move freely.

The Council will notify applicants of the reasons for refusal following determination.

There is no statutory appeal process against a decision to refuse an application.

4. Conditions

The Council's standard conditions are set out at Appendix 2. In some cases, extra measures may be required. This will be determined when assessing any application, on a case by case basis.

Where a local authority sets a local condition that covers the same matter as set out in national published conditions, then the locally set condition takes precedence over the national condition to the extent that it is inconsistent with it.

The national conditions relating 'no obstruction' and provision of 'no smoking' areas applies to all Licences. The National conditions are shown in Appendix 3.

5. Enforcement

The Council aims to work closely with other enforcement authorities to enforce the provisions of all appropriate legislation. The case remains that an obstruction of the Highway is an offence under The Highways Act 1980 and will be dealt with by the Highways Authority or the Police. The Council will normally seek to rectify any issues arising as a consequence of the activities authorised by a pavement licence by engaging in informal discussions with the licence holder in the first instance.

Obtaining a Pavement Licence does not confer the holder immunity in regard to other legislation that may apply, e.g. Public Liability, Health & Safety at Work, Food Hygiene and Safety, Alcohol and Entertainment Licensing, and Social distancing controls, and applicants must ensure all such permissions, etc. are in place prior to operating.

If the Council considers that a licence-holder has breached any condition of the licence, the authority may:

- revoke the licence, or
- serve a notice on the licence-holder requiring the taking of such steps to remedy the breach as are specified in the notice within such time as is so specified.

If a licence-holder on whom an enforcement notice is served fails to comply with the notice, the Council may:

- revoke the notice, or
- take the steps itself and recover the costs of doing so from the licence holder.

The Council may revoke a licence in the following circumstances:

1. For breach of condition, (whether or not a remediation notice has been issued) or
2. Where:
 - There are risks to public health or safety – for example by encouraging users to breach government guidance on social distancing by placing tables and chairs too close together;
 - the highway is being obstructed (other than by anything permitted by the licence);
 - there is anti-social behaviour or public nuisance – for example, the use is increasing the amount of noise generated late at night or litter is not being cleaned up;
 - it comes to light that the applicant provided false or misleading statements in their application – for example they are operating a stall selling hot food and had applied for tables and chairs on which drinks could be consumed; or
 - the applicant did not comply with the requirement to affix the notice to notify the public for the relevant period.
3. The Council may also revoke the licence where all or any part of the area of the relevant highway to which the licence relates has become unsuitable for any purpose for which the licence was granted or deemed to be granted. For example, the licensed area (or road adjacent) is no longer to be pedestrianised. The Council will give reasons where these powers are used.

All enforcement activity will be undertaken in line with the principles set out in the Regulator's Code and the Council's Enforcement Policy.

6. Review Procedures

This Policy covers the Temporary Permissions for Pavement Licences under the Business and Planning Act 2020, which are scheduled to expire on 30 September 2023.

The Policy has been drafted in consultation with the consultees listed in section 3.3, the appropriate lead councillors and will be presented for adoption by Licensing Committee on 27 September 2020.

This Policy will be reviewed from time to time should changes occur in relevant legislation, the nature of Pavement licences generally, relevant social distancing measures or as a result of local considerations within the Guildford Borough.

Appendix 1

Site Notice Template for display by an applicant for a Pavement Licence.

[Section x] of the Business and Planning Act 2020.

I/We *(name of applicant)*,

do hereby give notice that on *(date of application)* [I/we] have applied to Guildford Borough Council for a 'Pavement Licence' at:

(postal address of premises)

known as

(name premises known by)

The application is for:

(brief description of application (e.g outdoor seating to the front of the premises for serving of food and drink)

Any person wishing to make representations to this application may do so by writing, preferably by email, to:

Regulatory Services
Guildford Borough Council
Millmead House
Millmead
Guildford
GU2 4BB
regulatoryservices@guildford.gov.uk

by: *(last date for representations being the date 7 days after the date the application is submitted to the local authority (excluding public holidays))*

The application and information submitted with it can be viewed on the Council's website at: www.guildford.gov.uk/pavementcafe

Signed

Dated *(date the notice was placed which must be the same date as the date of application)*

Standard Pavement Licence Conditions

1. Permission to operate a pavement café does not imply an exclusive right to the area of public highway. The licence holder must be aware that Guildford Borough Council and others (e.g. police, highways authority, statutory undertakers) will need access at various times (including emergencies) for maintenance, installation, special events, improvements etc or any other reasonable cause and it is a condition of this licence to provide such access. This may mean that the pavement licence will need to cease operating and/or be removed for a period of time. On these occasions there would be no compensation for loss of business.
2. The licence holder must hold Public Liability Insurance for the operation of the Pavement Café. This must indemnify Guildford Borough Council and Surrey County Council against all claims for injury, damage or loss to users of the public highway, arising from the use of the highway for the permitted purpose. The minimum level of indemnity must be £10 million in respect of any one incident. Evidence of the insurance must be provided to Guildford Borough Council on request.
3. Tables and chairs must not be placed in position outside of the permitted times stated on the licence. When the licence is not in use, all tables and chairs and other furniture must be stored securely inside a premises away from the highway.
4. Guildford Borough Council and/or Surrey County Council are empowered following the service of the appropriate statutory notice, to remove and store or dispose of furniture from the highway, at the cost of the licensee, if it is left there outside the permitted hours, or should any conditions of the licence be ignored. The Council will not be responsible for its safekeeping.
5. An unimpeded pedestrian route must be maintained at all times for people wishing to use the footway as per the National Licence Conditions.
6. The method of marking the boundary of the licensed area must be agreed between the licence holder and the Licensing Department. Whatever method is agreed a 2 metre clear walkway must be maintained for the use of pedestrians.
7. Emergency routes to the premises and adjacent buildings must not be obstructed by the Pavement Café, which should not, unless otherwise agreed, extend beyond the width of the premises frontage.
8. Tables and chairs should be of an approved type and should be kept in a good state of repair. Furniture should be placed so as not to obstruct driver's sightlines, or road traffic signs. Placement of tables and chairs must allow pedestrians to use the footway parallel to the frontage of the premises. Care should be taken in the use of hanging baskets, awnings, protruding umbrellas etc. Alternative items may not be used without first seeking the written authority of the Council. Patio heaters must not be used.
9. All potential obstructions must be removed from the public highway when the premises are closed to prevent a safety hazard to pedestrians, particularly during the hours of darkness.

10. The licence holder shall not use or allow to be used any music playing, music reproduction or sound amplification apparatus or any musical instruments, radio, or television receiving sets in the area of the highway covered by the licence.
11. The licence holder must not allow customers using the area to engage in anti-social or disorderly behaviour.
12. The operation of the area must not interfere with highway drainage arrangements.
13. During the hours of darkness, suitable and sufficient lighting must be provided to ensure safe use of the area. Any proposals to provide additional lighting to the licensed areas must be agreed with the Highway Authority.
14. All detritus (food and drink remnants, spillages, bottles, cans, wrappers etc) must be regularly removed from the footway surface to reduce hazards to pedestrians. The licence holder must make arrangements to regularly check for and remove litter and rubbish on pedestrian walkways, left by persons using the premises, for a distance of up to 10 metres from the boundary of the premises. The licence holder must ensure that any tables are cleared in an efficient manner during the hours of operation. The licence holder must ensure the licensed area and surrounding highway is washed down at the completion of each day's usage using a method sufficient to remove food debris, grease and other spillages that may occur.
15. The licence holder is not permitted to affix any fixtures, or make excavations of any kind, to the surface of the highway without prior written approval.
16. The Licensee of a premises not licensed under the Licensing Act 2003 or any modification or re-enactment thereof, must not allow the consumption of alcoholic liquor within the licensed area.
17. The Licensee of a premises licensed under the Licensing Act 2003 or any modification or re-enactment thereof, must not allow the consumption of alcoholic liquor within the premises outside the hours in force for the premises itself.
18. The licence must be displayed on the premises with a plan of the agreed layout of the pavement café.
19. The licence holder must remove any tables, chairs and other furniture immediately at the end of the licence period or on revocation of the licence.
20. The licence holder must complete a risk assessment demonstrating how they will manage social distancing and the conflict between pedestrians using the footway, those using the tables and those queuing to access the premises, and provide a copy of this to the Council upon request.
21. The licence holder must ensure that the area covered by the licence is monitored regularly by staff to ensure that the conditions above are being adhered to.

NOTES

These conditions should be read in conjunction with any mandatory national conditions concerning pavement licences, if the premises is licenced under the Licensing Act 2003, any relevant conditions attached to the premises licence, the latest government

requirements concerning coronavirus and social distancing and any other relevant requirement of the Business and Planning Act 2020.

The licence holder is responsible for ensuring that the conditions of the licence and any other necessary permissions and regulations are adhered to. The Licence holder is to use the highway solely for the purpose of the licence in line with the provisions of this licence and for no other purpose whatsoever.

Guildford Borough Council reserves the right to revoke this licence at any time if any of the above conditions are not complied with.

National Conditions

The Secretary of State publishes this condition in exercise of his powers under [Section 5(6)] of the Business and Planning Act 2020:

1. Condition relating to clear routes of access:

It is a condition that clear routes of access along the highway must be maintained, taking into account the needs of disabled people, and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of [Inclusive Mobility](#).

Guidance on the effect of this condition

- To the extent that conditions imposed or deemed to be imposed on a pavement licence do not require the licence holder to require clear routes of access to be maintained, taking into account the needs of disabled people and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of [Inclusive Mobility](#), the licence is granted subject to those requirements.
- To the extent that a licence is granted subject to a condition which imposes requirements to maintain clear routes of access that are inconsistent with the requirements set out in this condition this condition is not imposed on the licence.

2. Condition relating to smoke-free seating

The national smoke-free seating condition seeks to ensure customers have greater choice, so that both smokers and non-smokers are able to sit outside, in order to protect public health by reducing risks of COVID transmission.

It is important that businesses can cater to their customers' preferences. The Business and Planning Act 2020 imposes a smoke-free seating condition in relation to licences where seating used for the purpose of consuming food or drink has been, (or is to be) placed on the relevant highway. The condition requires a licence-holder to make reasonable provision for seating where smoking is not permitted. This means that where businesses provide for smokers, customers will also have the option of sitting in a non-smoking area.

Ways of meeting this condition could include:

- Clear 'smoking' and 'non-smoking' areas, with 'no smoking' signage displayed in designated 'smoke-free' zones in accordance with Smoke-free (signs) regulations 2012 which can be viewed [here](#).
- No ash trays or similar receptacles to be provided or permitted to be left on furniture where smoke-free seating is identified.
- Licence holders should provide a minimum 2M distance between non-smoking and smoking areas, wherever possible.

Further, business must continue to have regard to smoke-free legislation under The Health Act 2006, and the subsequent Smoke-free (Premises and Enforcement) Regulations 2006.

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Licensing Committee Report

Ward(s) affected: All Wards

Report of Director of Service Delivery

Author: Mike Smith

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Email: mike.smith@guildford.gov.uk

Lead Councillor responsible: Merel Rehorst-Smith

Tel: 01483 610581

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Date: 27 September 2023

Taxi and Private Hire Policy – Private Hire Vehicle Operator Contracts

Executive Summary

The Council in its role as the Licensing Authority for the hackney carriage and private hire vehicle trades has a paramount obligation to ensure the safety of the public.

Following the updates to the Council's Hackney Carriage and Private Hire Vehicle Licensing Policy in 2021 and the consultation upon the Department for Transport's new draft Best Practice Guidance last year, on 28 July 2023 the High Court handed down a ruling following previous litigation between app-based drivers in London and workers' rights which affects the contract arrangements between Private Hire Operators and passengers under the Local Government (Miscellaneous Provisions) Act 1976.

In response to the Uber Britannia Limited v Sefton Metropolitan Borough Council & Others judgement, Officers are proposing a minor change to the Council's Licensing Policy which seeks to add a condition to all Private Hire Operator Licences to ensure Operators comply with this ruling.

Recommendation to Committee

That the Committee considers the issue identified in the report and recommends that a minor change to the Council's Taxi and Private Hire Licensing Policy is introduced under delegated powers. This change is to add a further condition to the Council's standard Private Hire Operator Licence Conditions to ensure compliance with the principle in the ruling.

Reason(s) for Recommendation:

To ensure all Guildford Licensed PHV operators are aware of their obligation to enter into a contract with the passenger as principal, where a passenger makes a booking, and their responsibilities under that contractual relationship.

Is the report (or part of it) exempt from publication?

No

1. Purpose of Report

- 1.1 The purpose of this report is to brief the Committee on a recent piece of case law affecting the Taxi and Private Hire Sector in respect of the contractual relationship which Private Hire Operators must enter into with passengers. It asks the Committee to consider a recommendation to amend the Policy under delegation to include an additional standard Private Hire Operator Licence condition to ensure Operators comply with their responsibilities as a result of this ruling.

2. Strategic Priorities

Updating the Policy will contribute to our fundamental themes as follows:

- **Homes and jobs** – supporting private hire operators to be aware of the contractual duties.
- **Environment** – improving transportation in the Borough through a well regulated private hire service.
- **Community** – ensuring that all taxi and private hire vehicle users are still able to travel safely.

3. Background

- 3.1 The Council in its role as the Licensing Authority for the hackney carriage and private hire vehicle trades has a paramount obligation to ensure the safety of the public. The current Hackney Carriage and Private Hire Licensing Policy approved in April 2021, reflecting Guidance issued by the Department of Transport in July 2020, introduced positive changes to the licensing function reflecting this obligation.
- 3.2 The industry has experienced considerable changes in the last 10 years with the rise in popularity of mobile app based private hire operators which has resulted in a number of legal cases about operating models and workers' rights.
- 3.3 On 6 December 2021, in the case of Uber London Ltd v Transport for London & others [2021] EWHC 3290 (Admin), the Divisional Court ruled in order to operate lawfully under the Private Hire Vehicles (London) Act 1998 (the legislation governing private hire in London) a licensed operator who accepts a booking from a passenger is required to enter as principal into a contractual obligation with the passenger to provide the journey which is the subject of the booking.
- 3.4 This case required the operator concerned to change its business model to contract directly with passengers rather than classifying itself as an agent. This has helped confirm driver status as workers with statutory protections and has also had VAT implications. This was predominantly a case relating to workers' rights, however it has had implications for all London based operators in respect of their operating model. It places the operator under an obligation to enter into a contract with the passenger as principal, where a passenger makes a booking, and affects their responsibilities under that contractual relationship.
- 3.4 Following this case, in order to level the competitive playing field nationally, Uber sought a declaration at the High Court to the one

- imposed on it for London to cover the rest of England and Wales where Operators are governed by the Local Government (Miscellaneous Provisions) Act 1976.
- 3.5 The most recent case is known as the Uber Britannia Limited v Sefton Metropolitan Borough Council & Others judgement and in the ruling handed down on 28 July, Mrs Justice Foster DBE agreed with Uber and that the current model of practice upheld by Councils for 47 years must now change. As a result, the position is that all Private Hire Operators must now accept the contractual responsibility for the transport of their passengers.
- 3.6 The obligation applies to all Private Hire Vehicle Operators in England and Wales, regardless of how many vehicles and drivers are available to them, the employment status of their drivers who carry out bookings accepted by them and whether the operator accepts bookings by telephone, in-person, online or via an app.
- 3.7 All Private Hire Operators following the judgement must satisfy themselves that they are complying with the obligation and fulfilling their responsibilities under private hire legislation in relation to the contractual arrangements they have in place with passengers and drivers. These responsibilities include that:
- a Licensed Private Hire Operator must itself accept bookings from its passengers, rather than anyone else (for example a driver) doing so;
 - a Licensed Private Hire Operator must itself take responsibility for the journey from point A to point B, rather than anyone else (for example a driver) doing so;
 - the booking must be carried out in a licensed Private Hire Vehicle (licensed by the same Council as where the Operator is licensed) (or taxi) driven by a licensed driver (again licensed by the same authority); known as the 'triple lock'

- the booking must be carried out for a fare which was either agreed or for which an accurate estimate was provided in advance.
- 3.8 The obligation applies to operators in the same way regardless of how they operate (e.g. if they take bookings via an app or over the telephone) and whether or not they use written contracts with passengers and/or drivers. A contract will exist even if it is not recorded in writing and the same requirements apply to operators who orally agree arrangements with passengers as they do to those who have written terms.
- 3.9 An operator can still sub-contract a booking to another licensed operator but the contract with the operator who initially accepted the booking must remain in force in the usual way. All operators must comply with the obligation including those without written contracts. Indeed, what a written contract says may not be conclusive evidence that an operator is complying with the obligation. What happens in practice must also be consistent with the obligation.
- 3.8 Following the ruling, there is likely to be an expectation that Local Licensing Authorities take steps to ensure that all licensed Private Hire Operators under their jurisdiction are aware and compliant with their obligations. From a licensing perspective, failure to do so could mean an unfair playing field for operators who are not compliant, and result in weakened protection for customers. There are also potential workers rights and tax implications for operators, however these are outside of the expertise and remit of the Council.
- 3.9 Section 55(3) of the Local Government (Miscellaneous Provisions) Act 1976 in respect of Private Hire Operator Licensing allows that:
“a district council may attach to the grant of a licence under this section such conditions as they may consider reasonably necessary”.
- 3.10 Clearly the judgement from the Senior Courts is one which all Local Authorities and Private Hire Operators must now have regard to in their practices. Consequently, this report proposes a prescribed standard licence condition to be included in all licences issued under

section 55 to ensure all Guildford Licensed Private Hire Operators are aware of their obligation to enter into a contract with the passenger as principal, where a passenger makes a booking, and their responsibilities under that contractual relationship.

3.11 The additional condition provides that:

“The operator shall enter into a contractual obligation as principal with the person making the private hire booking to provide the journey which is the subject of the booking, and any such contractual obligation must be consistent with the Local Government (Miscellaneous Provisions) Act 1976.”

3.9 Under the Council’s Constitution (page 3-68, paragraph 13), the Joint Executive Head of Regulatory Services, in consultation with the appropriate Lead Councillor, has delegation to make minor changes to the Taxi and Private Hire Licensing Policy. As such, should Licensing Committee agree, this change has been made under delegation with immediate effect.

4. Consultations

4.1 Clearly the judgement from the Senior Courts is one which all Local Authorities and Private Hire Operators must now have regard to in their practices.

4.2 The Licensed trade will be informed of the implications of the judgement, and the additional condition, via the Council’s Taxi and Private Hire Newsletter. All conditions are also clearly detailed on licences issued.

5. Key Risks

5.1 Clearly the judgment has implications for Private Hire Operators in respect of workers’ rights and tax. However, these are outside of the scope of the Council’s remit and it is important that the judgement is implemented properly by Operators to ensure a level playing field and

adequate protection for passengers making a booking, as otherwise there may be reputational and safety risks for Operators, passengers and the Council.

6. Financial Implications

- 6.1 There is no financial implications for the Council as a result of this change.

7. Legal Implications

- 7.1 The Council in its role as the Licensing Authority for the hackney carriage and private hire vehicle trades has a paramount obligation to ensure the safety of the public.
- 7.2 Section 55(3) of the 1976 Act allows the Council to attach conditions to the grant of a Private Hire Operator Licence which is considered to be reasonably necessary. The Council sets out what is considered necessary via its adopted Licensing Policy.
- 7.3 As set out previously, this is a judgement affecting all Licensing Authorities and Licensed Operators in England and Wales and consequently applies to all.
- 7.4 Should the Council refuse an application for the grant of a Private Hire Operator Licence, or revoke a licence once granted, there is a right of appeal.

8. Human Resource Implications

- 8.1 The minor change to the Policy can be managed from the current resource.

9. Equality and Diversity Implications

- 9.1 Under the general equality duty as set out in the Equality Act 2010, public authorities are required to have due regard to the need to

- eliminate unlawful discrimination, harassment and victimisation as well as advancing equality of opportunity and fostering good relations between people who share a protected characteristic and those who do not.
- 9.2 The protected grounds covered by the equality duty are: age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief, and sexual orientation. The equality duty also covers marriage and civil partnership, but only in respect of eliminating unlawful discrimination.
- 9.3 The law requires that this duty to have due regard be demonstrated in decision making processes. Assessing the potential impact on equality of proposed changes to policies, procedures and practices is one of the key ways in which public authorities can demonstrate that they have had due regard to the aims of the equality duty.
- 9.4 The additional licence condition will provide additional protection to all passengers, including those with protected characteristics. There are no other equality and diversity implications arising from this report.

10. Climate Change/Sustainability Implications

- 10.1 The Council's current Taxi and Private Hire Licensing Policy sets out a vehicle age and emissions criteria in order to help improve air quality in the Borough. There are no changes to this position.

11. Summary of Options

- 11.1 After considering the report, the Committee may:
- i. Recommend that a minor change to the Councils' policy in respect of a licensing condition to account for the Uber Britannia Limited v Sefton Metropolitan Borough Council & ORS judgement, or
 - ii. Not recommend such a change.

12. Conclusion

- 12.1 The current position is that the Uber Britannia Limited v Sefton Metropolitan Borough Council & ORS judgement applies to all Private Hire Operators in England and Wales and the addition of a licence condition to ensure Operators are aware of the judgement and their subsequent obligation to enter into a contract with the passenger as principal, where a passenger makes a booking, and their responsibilities under that contractual relationship.

13. Background Papers

[Taxi and Private Hire Licensing Policy 2021](#)

[Statutory Taxi and Private Hire Vehicle Standards \(Department for Transport, 2020\)](#)

[Taxi and Private Hire Vehicle Licensing: Best Practice \(Department for Transport, 2010\)](#)

[Taxi and Private Hire Vehicle Licensing: Best Practice Guidance for Licensing Authorities in England \(draft\). \(Department for Transport, 2022\)](#)

[Taxi and Private Hire Vehicle Licensing: Councillor Handbook \(Local Government Association, 2021\)](#)

[Uber Britannia Limited v Sefton Metropolitan Borough Council & ORS \[2023\] EWHC 1975](#)

[Guidance for London Private Hire Vehicle Operators: Contracts with Passengers - April 2022 \(tfl.gov.uk\)](#)

14. Appendices

None

Please ensure the following service areas have signed off your report.
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<i>Service</i>	<i>Sign off date</i>
<i>Executive Head for Regulatory Services</i>	
<i>Finance / S.151 Officer</i>	
<i>Legal / Governance</i>	
<i>HR</i>	
<i>Equalities</i>	
<i>Lead Councillor</i>	
<i>CMT</i>	
<i>Committee Services</i>	

Licensing Committee Report

Report of Dawn Hudd, Joint Strategic Director, Place

Author: Mike Smith, Senior Specialist for Licensing and Community Safety
/Sophie Butcher, Democratic Services Officer

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Email: mike.smith@guildford.gov.uk/sophie.butcher@guildford.gov.uk

Date: Wednesday 27 September 2023

Licensing Committee work programme: 2023-24

Recommendation to Licensing Committee

The Committee is invited to review and approve its current work programme for the remainder of the 2023-24 municipal year.

Reason for Recommendation:

To ensure that the Licensing Committee has an opportunity to review its work programme.

1. Purpose of Report

1.1 The work programme is presented to enable necessary changes to be made and to provide updated information on items for future meetings. Appendix 1 to this report sets out the Committee's work programme to date, including any items currently unscheduled.

2. Financial Implications

2.1 There are no specific financial implications arising from this report.

3. Human Resource Implications

3.1 There are no specific human resources implications arising from this report.

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4. Legal Implications

4.1 There are no specific legal implications arising from this report.

5. Background papers

None

6. Appendices

Appendix 1: Licensing Committee - Draft Work Programme: 2023-24

Licensing Committee

Draft Work Programme 2023-24

September 2023		
Item	Details of decision to be taken	Officer
Licensing Policy for Activities Involving Animals	The Committee to approve the updated Animal Welfare Licensing Policy following a 12-week consultation.	Mike Smith, Senior Specialist for Licensing and Community Safety 01483 444387
Extension to Pavement Licensing	That the Committee notes the extension of the Business and Planning Act for the Licensed trade, and subject to the passing of the necessary Statutory Instrument, Approves the extension of the current Pavement Licensing Policy at Appendix 1 for a further 12 months.	Mike Smith, Senior Specialist for Licensing and Community Safety 01483 444387
Taxi and Private Hire Policy – Private Hire Vehicle Operator Contracts	That the Committee considers the issue identified in the report and recommends that a minor change to the Council’s Taxi and Private Hire Licensing Policy is introduced under delegated powers. This change is to add a further condition to the Council’s standard Private Hire Operator Licence	Mike Smith, Senior Specialist for Licensing and Community Safety 01483 444387

	Conditions to ensure compliance with the principle in the ruling.	
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November 2023		
Item	Details of decision to be taken	Officer

January 2024		
Item	Details of decision to be taken	Officer
Licensing Annual Report	The Committee to note the Licensing Annual Report	Mike Smith, Senior Specialist for Licensing and Community Safety 01483 444387
Taxi Licensing Annual Report	The Committee to note the Taxi Licensing Annual Report	Mike Smith, Senior Specialist for Licensing and Community Safety 01483 444387

March 2024

Item	Details of decision to be taken	Officer
Gambling Act 2005	The Committee to review the Gambling Act Statement of Principles in line with the statutory 3 year review period.	Mike Smith, Senior Specialist for Licensing and Community Safety 01483 444387
UNSCHEDULED ITEMS		
Item	Details of decision to be taken	Officer
Best Bar None Update	The Committee to receive an update in relation to Best Bar None.	Mike Smith, Senior Specialist for Licensing and Community Safety 01483 444387
Street Trading Policy	The Committee to consider an updated draft Street Trading Policy and approve public consultation.	Mike Smith, Senior Specialist for Licensing and Community Safety 01483 444387
Charity Collections Policy	The Committee to consider an updated draft Charitable Collections Policy and approve public consultation.	Mike Smith, Senior Specialist for Licensing and Community Safety 01483 444387

Hackney Carriage and Private Hire Licensing Policy	The Committee to review the Hackney Carriage and Private Hire Licensing Policy following updates to the Department for Transport Best Practice Guidance	Mike Smith, Senior Specialist for Licensing and Community Safety 01483 444387
Pavement Licensing Policy	The Committee to review the Pavement Licensing Policy following legislative changes under the Levelling Up Bill.	Mike Smith, Senior Specialist for Licensing and Community Safety 01483 444387
Hackney Carriage and Private Hire Licence Fees	The Committee to review the fees and charges for Hackney Carriage and Private Hire Licence fees	Mike Smith, Senior Specialist for Licensing and Community Safety 01483 444387
Hackney Carriage Fares	The Committee to review the fares for Hackney Carriage journeys	Mike Smith, Senior Specialist for Licensing and Community Safety 01483 444387
Purple Flag 2023	The Committee to note the Purple Flag Update	Mike Smith, Senior Specialist for Licensing and Community Safety 01483 444387

Mobile Homes	The Committee to receive an update.	Sean Grady Private Sector Housing and Pollution Lead 01483 444392
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