

Licensing Committee Report

Report of the Strategic Director - Place

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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 this 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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