



Licensing Committee minutes

Minutes of the meeting of the Licensing Committee held on Tuesday 26 July 2022 in The Oculus, Buckinghamshire Council, Gatehouse Road, Aylesbury HP19 8FF, commencing at 6.30 pm and concluding at 7.50 pm.

Members present

J Baum, T Green, C Jones, N Rana, J Rush, N Southworth, D Town, H Wallace, D Watson and A Wood

Apologies

D Barnes, P Griffin, B Stanier Bt, J Towns and G Wadhwa

Agenda Item

1 Apologies for absence

Apologies were given from Cllrs Dominic Barnes, Paul Griffin, Sir Beville Stanier Bt, Jocelyn Towns and Gurinder Wadhwa.

2 Declarations of interest

There were no declarations of interest.

3 Minutes of the previous meeting

The Minutes of the Meeting held on 15th June 2022 were agreed as a correct record.

4 Harmonisation of skin piercing registration requirements and model byelaws for skin piercing activities

The Licensing Committee received a report on the harmonisation of skin piercing registration requirements and model byelaws for skin piercing activities. This report sought Members' approval for the adoption of model byelaws for the safe practice of acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis across the whole district.

Currently Aylesbury, Chiltern and Wycombe legacy areas had adopted the provisions of sections 14 and 15 of the Local Government (Miscellaneous Provisions) Act 1982, which required the registration of businesses and persons who perform skin piercing namely tattooing, ear piercing, electrolysis and acupuncture. As part of a consolidation exercise, it was recommended that the provisions of sections 14 to 17

inclusive of the Act be adopted across the Buckinghamshire area.

At present, the Buckinghamshire area had existing byelaws from legacy council areas which dealt with the hygiene practices and procedures in relation to some or all of the practices of acupuncture, electrolysis, ear piercing, tattooing, cosmetic piercing (piercing of the body including the ear) and semi-permanent skin-colouring including micro pigmentation, semi-permanent make-up and temporary tattooing. However, these were not consistent across the whole of the Council area. A draft byelaw based on the consolidated set of model byelaws, which had been produced by the Department of Health, was attached at Appendix 1. It was recommended that all existing byelaws from the legacy council areas in relation to semi-permanent skin-colouring and cosmetic piercing, acupuncture, ear piercing, electrolysis and tattooing or related be revoked and replaced by the consolidated set of model byelaws for the Buckinghamshire Council area.

If sections 14-17 of the Act and then the consolidated byelaws were not adopted, then there might be some members of the public who would not be adequately protected from unregistered businesses. By extending the range of activities that come within the registering regime, greater protection from the transmission of blood borne virus infections would be provided and improved enforcement provisions adopted.

As part of the adoption and confirmation processes for byelaws, the Council would be required to publish public notices as a one off exercise in local newspapers. Whilst the adoption and implementation processes for both the requirement to register business and byelaws would incur a cost to the Council, this would be met from within existing budgets.

If adopted, as well as the statutory requirements, such policy changes would be publicised on the Council's web pages and existing businesses would be notified. Existing skin piercing businesses had already been notified of the potential change in policy as part of communication relating to the harmonisation of the registration fees.

If approved by Full Council on 21st September 2022, the statutory implementation process after adoption of the registration requirements would be completed, new registration requirements policies would be created/extended pending formal implementation and related byelaws for cosmetic piercing, semi-permanent skin colouring, acupuncture, ear-piercing, electrolysis and tattooing would be drawn up in line with the consolidated model byelaws. An application to the Secretary of State would be made for confirmation of such byelaws covering the Buckinghamshire Council area and that once confirmed, related existing legacy byelaws would be revoked.

Members were invited to ask questions of officers. In response to a question about how many businesses there were in Buckinghamshire which offered skin piercing services, the Committee was advised that there were approximately 350 premises and 870 operators. It was noted that there could be a number of operators within

one premise.

Following a query regarding what had happened previously in the South Bucks legacy area, officers explained that whilst the adoption of the registration provisions of the act went through the relevant Licensing Committee, the byelaws were then not confirmed by the Secretary of State. Therefore, whilst there was a requirement to register in the South Bucks legacy area, the actual byelaws were not adopted.

In response to a question regarding how many officers there would be to enforce the requirements of Sections 14 to 17 of the Act and the byelaws, it was confirmed that there were 12 Environmental Health officers. It was noted that not all of these 12 were fulltime employees and their role was primarily food hygiene and covering reactive work in terms of health and safety. The Committee was advised that with all new registrations, an officer would carry out an inspection of the premises, assess the new operator in terms of experience and qualifications and go through the operations with them to ensure safe practice. A Member questioned whether it would be beneficial to have more officers to carry out this work as it seemed resource intensive.

With regard to finding unregistered businesses, it was noted that Environmental Health officers, whilst working in their local area, would often see if a new business had started up. Also, existing businesses would often inform Environmental Health if they became aware of a new business which wasn't registered. In relation to unregistered mobile operators, officers discovered unregistered mobile operators through complaints, the planning service or by looking at social media for advertisements.

It was confirmed that the penalty for not registering was a level 2 offence in the Magistrates Court, which would result in a fine of £500. A concern was raised that this fine was not high enough to encourage businesses and operators to be registered. In response, officers explained that this fine was set down in legislation and therefore the Council had no powers to change this. If the operator was operating in an unsafe way, then the Council could use the provisions set out in the Health and Safety at Work Act, under which there were greater penalties.

A Member queried whether an operator needed a recognised qualification in order to carry out skin piercing activities. The Committee was advised that whilst there wasn't a recognised qualification that an operator needed to have, as part of their inspection and assessment of the operator, officers did scrutinise operators, including their experience, any qualifications they might have and their practices.

With regard to registration requirements, it was confirmed that if a business changed ownership, that new business would need to register. Also, if a business took on a new operator, that operator would need to be registered.

In response to a question regarding whether there was any harmonisation across the county boundaries with neighbouring authorities, officers advised that whilst they were not aware of what the provisions of neighbouring authorities were, it was

likely the neighbouring authorities would have the same byelaws as the model byelaws which were created by the Department of Health and that the Local Government (Miscellaneous Provisions) Act 1982 (as amended) applied to the whole of England and Wales.

It was noted that if any Members or residents had any concerns regarding the practices of an operator, they should contact Environmental Health.

On a vote being taken the recommendation was proposed by Cllr Wood and seconded by Cllr Town and:-

RESOLVED to recommend to Full Council:

- 1) That the Council resolve to adopt the provisions of Sections 14 to 17 inclusive of the Local Government (Miscellaneous Provisions) Act 1982 (as amended) in relation to Acupuncture, Tattooing, Ear-Piercing and Electrolysis to apply to the Buckinghamshire Council area.**
- 2) That following the implementation period for the resolution to adopt the provisions of Sections 14 to 17 inclusive of the Local Government (Miscellaneous) Provisions Act 1982 (as amended) the Council resolve to adopt the model byelaws relating to acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis which appear at Appendix 1.**

Note: Cllrs David Watson, Joseph Baum and Nick Southworth joined the meeting after the commencement of this item and therefore did not take part in the vote for this item.

5 Harmonisation of animal licensing fees and charges

In accordance with the Animal Welfare Act 2006, Buckinghamshire Council, in its role as Licensing Authority, was responsible for authorising businesses that provide animal activities and ensuring that these activities meet statutory licensing and welfare standards that were prescribed by DEFRA. In addition, the Council was also responsible for licensing kept animals that were defined as dangerous wild animals under the Dangerous Wild Animals Act 1976 and for the licensing of zoos under the Zoo Licensing Act 1981. The Council was currently operating different charging structures for these licence activities across the legacy council areas. This report sought approval of a single harmonised fee structure for animal licensing activities across the Buckinghamshire Council area.

The Council's constitution provided delegated responsibility to officers to set fees but recognised that it may be appropriate, under consultation with the portfolio holder, to refer a decision to the relevant Committee. Given the level of the changes proposed, it was considered that the Licensing Committee should review the proposed fees and charges and decide on the level to be set. There was no statutory requirement for public consultation when setting fees under the Acts and the proposed fees and charges were included within the report solely for the purposes

of consideration and approval by the Committee. Fees should be set at a level to ensure full cost recovery whilst also being fair and providing value for money for the businesses. Councils were required to take a reasonable and proportionate approach and should aim to set a fee level that was sufficient to cover the cost, but not make a surplus.

The general methodology behind the review of these fees was determined by the document 'Open for business: Local Government Association (LGA) guidance on locally set licence fees'. The core principles in the LGA guidance were that fees should be non-discriminatory; justified; reasonable and proportionate to the cost of the processes associated with a licensing scheme; clear; objective; made public in advance; transparent; and accessible. It was an accepted principle that licensed activities should be funded on a cost-recovery basis, paid for by those benefiting from the licensed activity, rather than drawing on the public purse.

A comprehensive review of the cost of delivering animal licensing services had been carried out and new fees were being proposed that reflected both the full staffing costs of running the service as well as the support service costs. The proposed fees and charges were provided at Appendix 1. The proposed Buckinghamshire Council fees had increased considerably on what was previously set for the legacy Aylesbury Vale and Chiltern and South Bucks areas, largely because of no significant review occurring of the regime since its initial introduction in 2018 when fee setting would have been wholly anticipatory.

Benchmarking of the proposed fees was undertaken with neighbouring local authorities, and with other licensing authorities where fee review had taken place since the introduction of the legislation in 2018. Current fees charged in the legacy district council areas, and the proposed fees and benchmarking against other local authority areas were attached at Appendix 2 and showed that there was significant disparity across local authority areas in terms of the fee levels charged. It appeared that many local authorities, as was the case for the legacy Buckinghamshire council areas, had not carried out full fee review since the Regulations were introduced in 2018.

As it appeared that many local authorities had not reviewed their fees since the introduction of the legislation in 2018, the benchmarking exercise was extended to include authorities where an internet search indicated that a review had taken place (Dacorum, Royal Borough of Windsor and Maidenhead, Westminster, Herefordshire and Richmond) to provide comparative figures. A comparison of the proposed fees and charges with authorities that had reviewed their fees since 2018 was attached as Appendix 3. Where fees had been reviewed in other local authority areas, generally the proposed fees for Buckinghamshire compared relatively favourably, with the majority of the proposed fees lower than those in place in Dacorum, Royal Borough of Windsor and Maidenhead, Westminster, Herefordshire and Richmond.

If approved, the fees would come into effect on the 29th August 2022 to provide time for the Licensing Service to notify current licence holders of the change in

advance of it coming into effect, and to make the necessary website and system changes.

Members were invited to ask questions of officers. In response to a query on what a black buck was, as mentioned in paragraph 2.9 of the report, officers explained that a black buck was a type of antelope and it was considered dangerous due to its very sharp horns.

With regard to the duration of an animal licence, the Committee was advised that animal licences ranged from 1-3 years, dependent upon the level of compliance and welfare standards adopted by the business. The fee was the same whether it was for 1 or 3 years as the cost of the inspection and issuing the licence was the same.

It was noted that all operators were subject to an inspection prior to the granting of a licence and were then subject to one unannounced visit within the term of the licence. Premises with lower levels of compliance at inspection were subject to additional scrutiny during the licence period which could be by way of ad-hoc visits and/or contact. In addition, officers would carry out additional visits to a licensed premises as a result of intelligence or information received and at the request of an operator to vary their licence, for example to increase animal numbers or species. Officers also worked closely with current and future business operators to support and advise them regarding statutory requirements and compliance.

Following a query about how the Licensing Service gathered information about unlicensed breeders and possible illegal or unregulated activity, the Committee was advised that such information often came from complaints or through intelligence from environmental health, for example via noise complaints. Licensing officers also did checks on social media and platforms like 'Pets4Homes'. Licensing officers were able to do data requests to obtain intelligence from 'Pets4Homes' when investigating unlicensed breeders. There was also an intelligence report form, which could be submitted to HMRC if licensing officers find evidence of someone not lodging their profits with HMRC.

In response to a comment that sometimes it was difficult to know whether a licence was required when breeding a family pet, officers explained that it depended on whether they were acting commercially and that the HMRC's '9 badges of trade' was used as guidance to help determine this. Cases were assessed on a case by case basis to determine if they were operating like a business and trying to make a profit. It was noted that dog grooming did not require a licence.

In response to a concern, which was raised regarding the fact that there had been no public consultation on the proposed changes to fees, officers reiterated that there was no statutory requirement for public consultation when setting fees under the Acts. A Member commented that even though it was not a statutory requirement, as long as the costs of carrying out a consultation was not too high, they would find it beneficial if operator views were available the next time the charges were to be reviewed.

Following a question regarding what the historic budget positions for animal licensing had been in the legacy areas, it was noted that there was limited clarity on the historic budget position for animal licensing, as financial information prior to the formation of the new Council was not easily available. In addition, animal licensing continued to be delivered in different Directorates up until October 2021. The proposed fees had been set based on an understanding of the existing service activity and costs and the anticipated activity and costs going forward.

In response to a concern that the proposed fees seemed to be a lot higher than other local authorities such as Central Bedfordshire, officers advised that it was difficult to compare animal licensing fees consistently across local authorities because local authorities charge quite differently for the regimes and some of them split the fee and charge the initial part of the licence fee and then charge another fee on the granting of the licence. There was a considerable difference in the amount of work and associated activity required for each regime (based on time taken and volume of premises). Therefore, where fees, as shown in appendix 2, were all the same level across the regimes, as was the case with Central Bedfordshire, it was indicative of fees that were probably set at the start of the legislative regime when limited information was available to inform setting and had then not been reviewed since. Buckinghamshire was now a reasonably large animal licensing authority and some of the authorities which it was being compared with were smaller in nature and therefore reviewing their fees for animal licences might not be such a priority for them. As was shown in appendix 3, where fees had been reviewed in other local authority areas, generally the proposed fees for Buckinghamshire compared relatively favourably.

Officers reiterated that the proposed fees had been set to cover the cost of delivering animal licensing services in Buckinghamshire and had not been set to make a profit. If the Committee decided not to increase the fees as proposed, the Service would continue to operate at a loss.

With regard to the proposed timing of the commencement of the fees, it was noted that most animal licence renewal applications were received by the Licensing Service in September and October and therefore harmonising fees prior to this peak in demand would help to provide a consistent service across the County area and ensure that the Council was effectively covering the costs of the activity and service provided.

In response to a concern raised that operators might not have budgeted for the increase in fees, officers advised that it was hoped that most operators would be able to cover the costs as they were operating as commercial businesses that make a profit. The Service was always mindful of working with operators if they faced any barriers or issues, but the fee would form part of the application process so would need to be paid in order for the application to be deemed valid.

Following a comment regarding the importance of ensuring that businesses and operators were informed of any changes to the fees as quickly as possible, officers

assured the Committee that they would provide information electronically to businesses and operators as soon as possible after the meeting if the proposed fees were to be approved. The Council's relevant webpages would also be updated. In addition, following a suggestion from a Member of the Committee, officers agreed to notify all Members of the Council of the changes if approved.

In relation to reviewing the fees, officers explained that because of the duration of the majority of the licences would be for three years, the Council would do a full review on a three year rolling basis in order to capture those enforcement and compliance costs over that period. A lighter touch review would also be undertaken annually. Where appropriate an increase would be applied to the fee in line with RPI to recover related increased costs to the Council. If another inflationary measure was prescribed by Government in the future, then this would be applied to the fee to recover related increased costs to the Council. The Committee agreed that, whilst a full review would take place in three years' time, an update report, showing the results of the lighter touch review, should be submitted to the Licensing Committee in a year's time. This was so that the Committee could ensure that there was no profit being made.

With regard to the Animal Welfare (Kept Animals) Bill, which was currently progressing through Parliament and was at report stage prior to third reading in the House of Commons, the Committee was advised that if the Bill was to become law as drafted it would introduce further legal requirements and activities which were likely to fall to local authorities to carry out. These would include plans to tackle puppy smuggling, compulsory cat microchipping, the expansion of existing licensing regimes to include animal sanctuaries and rescue centres for cats, dogs and horses and changes to dangerous wild animal legislation on the keeping of primates, which would mean a new licensing regime in this area. The Service continued to closely monitor the progress of the Bill, as if it was to become law there could be a need for significant additional skilled staff resource requirements, as well as the introduction of new inspection and fee regimes.

Following a request for information on what the Council's responsibilities were in relation to the Dangerous Dogs Act 1991, officers confirmed that they would ask colleagues in Environmental Health and would forward the information onto Members of the Committee after the meeting.

On a vote being taken the recommendation was proposed by Cllr Green and seconded by Cllr Southworth and:-

RESOLVED that the proposed animal licensing fees and charges for Buckinghamshire, set out in Appendix 1, be approved. The new fees and charges to come into effect from the 29th August 2022.

6 Date of next meeting

Post Meeting Note: the next meeting would be held on 09 November 2022 at 6.30pm (the meeting which was scheduled for 06 September 2022 had been cancelled).