



## Report to Licensing (Regulatory) Committee

<b>Date:</b>	7th November 2023
<b>Title:</b>	Buckinghamshire Council draft Animal Licensing Policy
<b>Cabinet Member(s):</b>	Cllr Mark Winn, Cabinet Member for Homelessness & Regulatory Services
<b>Contact officer:</b>	Catriona Crelling, Senior Licensing Officer
<b>Ward(s) affected:</b>	none specific
<b>Recommendations:</b>	<b>To agree the final draft of the Animal Licensing Policy with an implementation date to be agreed with the Chairman of the Licensing Committee and Head of Licensing Service.</b>
<b>Reason for decision:</b>	The adoption of a policy supports the Council's commitment to transparency, fairness and openness when determining applications and ensuring compliance with the relevant legislation.

### 1. Background

- 1.1 In accordance with the Animal Welfare Act 2006, Buckinghamshire Council, in its role as Licensing Authority, is responsible for licensing operators of businesses carrying out prescribed activities involving animals. In addition, the Council is also responsible for licensing keepers of animals that are defined as dangerous wild animals and for the licensing of zoos.
- 1.2 There is currently no animal licensing policy covering the Buckinghamshire Council area. Whilst there is no statutory requirement for a policy under any of the legislation relating to these types of licence, it is considered appropriate to produce a single policy which sets out a clear and consistent framework for the Council's approach to animal licensing. The adoption of a policy supports the Council's commitment to transparency, fairness and openness when determining applications and ensuring compliance with the relevant legislation.

- 1.3 The draft Animal Licensing Policy (“the Policy”) provides guidance on the various application processes, a brief overview of relevant legislation and links to statutory guidance. The legislation and regulations under which animal licences are issued require the Council to determine, among other factors, whether the applicant is suitable or in the case of The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 “fit and proper” in terms of their ability to comply with licence conditions and to be an operator for that type of activity. Whilst there is no legal definition of “fit and proper” in the regulations, the Policy provides an opportunity to outline matters which the Council will take into consideration when deciding if someone is suitable to hold a licence.
- 1.4 As well as the need to comply with the different statutory licensing requirements, it is of public interest to ensure the general safety and wellbeing of animals, those responsible for them and members of the public who may come into contact with them. The adoption of a Policy will also give the Council an opportunity to set out its expectations around safeguarding for operators of businesses whose activities take place around children and vulnerable persons.
- 1.5 On the 11<sup>th</sup> April 2023 the Licensing Committee approved a new draft Animal Licensing policy to be put out for consultation. The report provided to members at this meeting can be viewed here:  
<https://buckinghamshire.moderngov.co.uk/ieListDocuments.aspx?CId=349&MId=17574&Ver=4>
- 1.6 The policy has now been subject to a full consultation process which ran from 20<sup>th</sup> April 2023 to 31<sup>st</sup> May 2023. The purpose of this report is to provide feedback on the responses received as part of the consultation and to identify any changes to be made to the draft policy in response to the consultation.

## **2. Main content of report**

- 2.1 In total there were 26 responses to the consultation survey. 25 were received via the online consultation through Your Voice Bucks and one response was posted to the council. The summary of these responses is attached as Appendix 1. The comments provided with responses are shown in Appendix 2.
- 2.2 Following this consultation process and as set out in this report, the draft policy, with our proposed amendments is attached to this report as Appendix 3.
- 2.3 80% of those that responded to the survey were residents of Buckinghamshire and 84% responded as individuals rather than on behalf of an organisation. The vast majority had been emailed the consultation directly as consultees or had seen the link to the consultation via social media. 8 of the 26 that responded to the consultation stated that they were existing licence holders.

- 2.4 A clear majority of those who responded to the survey agreed that applicants should provide evidence of a Disclosure and Barring Service (DBS) check to hold a licence, with 61.5% voting yes, and 26.9% voting no. A further 11.5% answered “don’t know”. Comments such as “it is important for my clients to know that their dog is being looked after by an honest and trustworthy person or team” and “ this then provides information in relation to recent previous criminal history to ensure that applicants and operators are fit and proper, therefore more likely than not to adhere to regulations in relation to any licenses” were received.
- 2.5 Comments from those that did not agree with the requirement for a DBS check indicate that they felt it was irrelevant to their business, for example “This should only apply...to applicants and licence holders whose activities involved contact with children or vulnerable persons” also that this was potentially over regulation and beyond the remit of the legislation the licences are issued under. One responder has stated "There is no requirement for this within the legislation. This has been raised with Defra and they agree where there are children / vulnerable adults such as for exhibit and in riding schools but it is not a reason for refusing a licence and Defra do not think this is appropriate legislation to require a DPS (sic DBS) and are talking to other departments. it has been raised during the PIR. In regards to Animal health and welfare a DBS check will not show any convictions undertaken by the RSPCA or LA"
- 2.6 We have contacted Department for the Environment, Food and Rural Affairs (DEFRA) directly and also two local authorities who already require a Disclosure and Barring Service (DBS) check as part of their animal licensing application process. None were aware of any legal challenge to this requirement.
- 2.7 DEFRA have also acknowledged that consideration of non-animal welfare related convictions may be relevant as part of the ‘fit and proper person’ test in particular circumstances.
- 2.8 Although there is no specific requirement to provide a DBS in the legislation under which these licences are issued, the legislation is clear that the Council must be satisfied that an applicant is suitable and with regard to Licensing of Activities Involving Animals (LAIA) licences, that the applicant provide whatever information the local authority has required as part of the application process.
- 2.9 There is currently no central database to record animal welfare offences or disqualifications relating to animals. In addition, there is a recognition that other types of offences may need to be taken into consideration if they indicate that an individual is not suitable to be granted a licence, to operate that type of business or unlikely to be compliant with licence conditions.

- 2.10 For these reasons, it is still felt appropriate to include this requirement in the Policy and is considered a proportionate requirement to be made of applicants in order to assist in satisfying the Council that it is granting licences to people who are suitable.
- 2.11 To ensure clarity on the Council's approach to applications and how it will deal with evidence of convictions when determining applications (e.g. that convictions will only be considered if they are relevant, that each case will be dealt with on its own merits and on a case by case basis), the draft policy has been restructured and some wording changed so that there is a new section early in the policy setting out an overview of the application process for all three animal licence types and removed from the section on LAIA licences. This new section can be seen as section 2 of the amended draft policy attached as Appendix 3 of my report.
- 2.12 Another concern raised during the consultation was the practicality of the requirement of the DBS to be no more than one month old. Other areas of licensing, for example an application for a personal licence under the Licensing Act 2003, do require a DBS to be no more than one month old, however it is proposed that the draft policy be amended to a requirement for the DBS to be no more than two months old to avoid any logistical issues whilst this new policy is implemented. Should the Policy be approved, this can always be reviewed at a later date.
- 2.13 The requirement for applicants and licence holders whose activities involve contact with children and vulnerable people to be required to have a safeguarding policy and provide staff training was strongly supported, with 80.7% voting yes for this requirement. Only 7.6% voted "no" and a further 11.5% voted "I don't know". The voting figures were the same in relation to having a procedure for vetting staff who had unsupervised contact with young/ vulnerable persons. Comments from those voting "yes" include "To ensure staff are prepared to deal with the safeguarding needs of children and vulnerable people and to reassure the public about the integrity and capability of licence holders." And "by having a policy the applicant / business is covering aspects of Due Diligence and if by some means that a policy isn't working it can be amended to provide the cover required" and "This is a good idea as all organisations and clubs already have this sort of thing"
- 2.14 76.9% of those that responded to the question "How easy is the draft Buckinghamshire Council Animal Licensing Policy to understand?" found the policy either "very easy" or "somewhat easy" to understand. 19.2% found the policy "not very easy" to understand. The Policy is a complex document due to the nature of Animal Licensing with a number of different pieces of legislation and types of licence to be covered in one document. It is therefore pleasing to see this level of positive feedback from those that responded. However, as set out in this report, following feedback from our legal department it is proposed that some elements of the draft policy are restructured or rephrased to make it clearer for the reader. (Appendix 3 sec 2, sec 8 of amended draft policy are examples)

2.15 Of those that stated that the Policy was “not very easy” to understand one person has commented “Provide examples of correctly written documents that are needed together with the application eg operation procedures or safety procedures manual so applicants can easily find what is needed to submit applications. (I had to find examples on websites of other councils in the UK for my application). Have an advisor available over the phone or on line that understands the process and can advise applicants on correct paperwork and procedures.” The Licensing Service are happy to provide applicants with advice over the phone and by email. The Council’s website also provides basic guidance on the application process, including what documents are required and a link to the statutory guidance which clearly sets out the licence conditions and criteria to meet each condition. It is felt inappropriate to repeat this information in the policy as the statutory guidance may change and businesses vary greatly in their scale and way of operating. Applicants are required to demonstrate their understanding of the legislation through the production of operating procedures and appropriate paperwork in support of their application. Templates for some elements of required paperwork such as preventative healthcare plans are available on industry websites and applicants are signposted to these.

2.16 Officers working within animal licensing have also provided valuable feedback and as a result of this the following recommended amendments have been made to the draft policy:

- It has been clarified that existing licence holders will be required to complete a DBS check when they next complete a renewal application. (App 3 sec 2, para 2.2)
- A slightly more detailed outline of the AWA 2006 has been provided in section of 4 of the amended draft policy, to more accurately summarise what is set out in the Act. ( App 3, sec 4 para 4.1)
- The draft policy has been updated to reflect that as of 1<sup>st</sup> October all inspectors carrying out LAIA licence inspections must be suitably qualified and no longer have any grandfather rights. ( App 3, sec 5 para 5.7)
- A new section has been created setting out the Council’s expectation that all licence holders will update the licensing service of any significant changes in circumstances, incidents relating to their licence, arrests, cautions or convictions for animal welfare offences as it was felt that this applied to all licence types, not just LAIA licences. Licence holders must also notify the licensing service of any bail conditions which may affect how they are able to operate their business.( see Appendix 3, sec 8)
- Appendix 3 of the draft policy “Standard Zoo Licence Conditions” has been updated to reflect the most current APHA’s recommended wording for

licence conditions which have been provided by a state appointed inspector during a recent periodical zoo inspection.

### **3. Next steps and review**

- 3.1 If approved by Committee, an implementation date for the new Animal Licensing Policy will be agreed between the Chairman of the Licensing Committee and the Head of the Licensing Service, taking into consideration any practicalities such as updating the Council's webpages, application forms and processes.

### **4. Other options considered**

- 4.1 The Council could choose not to have an animal licensing policy as there is no statutory requirement to have one. However, as stated above, a policy provides an opportunity for the Council to set out its approach to animal licensing, providing clarity for applicants, licence holders and other affected parties.
- 4.2 The LAIA Regulations have been reviewed by DEFRA and in the light of the Government scrapping the Animal Welfare (Kept Animals Bill), the Council could choose to wait to see what smaller pieces of legislation will be introduced to address areas such as keeping primates as pets and the licensing of zoos. However, this will undoubtedly cause a significant delay in the introduction of a policy.

### **5. Legal and financial implications**

- 5.1 The legal implications were set out in the report presented to committee on 11<sup>th</sup> April 2023 prior to the approval of a draft policy. In summary, the Policy ensures consistency of approach and it is considered that the Council would be far less likely to be open to legal challenge where a policy is adopted which clearly sets out how applications will be considered, reasons for refusal or our approach to enforcement. The introduction of a DBS check does engage further data protection requirements but is considered proportionate and acceptable. Further implications are dealt with below.
- 5.2 Fees are generally subject to a full review every 3 years however, taking account of the recent harmonisation of the animal licensing work activities of Buckinghamshire Council and anticipated review of the LAIA Regulations at the end of 2023, fees will initially be reviewed annually to comply with standards of fee setting.

## 6. Corporate implications

**Protecting the vulnerable** – by setting out our expectations around safeguarding, the Council hopes to build awareness amongst operators of their responsibilities towards vulnerable groups who can benefit hugely from activities involving animals such as horse riding and animal assisted therapy. It is hoped that this will also provide additional assurances to customers of these businesses.

**Property** – N/A

**HR** – N/A

**Climate change** – N/A

**Sustainability** – N/A

**Equality** – An equality impact assessment screening assessment has been carried out which does not indicate any adverse or disproportionate effects on those with protected characteristics however the assessment will be kept under review to ensure appropriate information in this regard is available as and when required.

**Data** – dealing with any application for a licence will require the collection and processing of personal data. Such processing is justified by the public interest in appropriate licensing and safety requirements for both animals and their owners or others who they will come into contact with. The Council's current licensing procedures ensure relevant personal data (including criminal conviction data) is processed in accordance with the Data Protection Act and UK GDPR requirements and this will apply to any further, more detailed personal data (if any) processed as a result of the proposed Policy being adopted.

**Value for money** – policy will be reviewed as legislative changes occur and updated accordingly, ensuring that it is fit for purpose. A formal review will be carried out at least every 5 years. All of this work will be performed by officers in-house.