

Introduction of a Local Policy in respect of Home Boarding Businesses with additional hosts

Licensing Committee

Date: 17th December 2018

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Wards: All

Parishes Affected: All

1. Purpose and Reasons

- 1.1 To seek the agreement of the Licensing Committee to adopt a local policy covering licence inspections in respect of home boarding premises falling 'out of scope' as defined in DEFRA guidance, referred to in paragraphs 3.10 – 3.11 and 3.14-15 of this report, and to commend the policy to Council for adoption.

2. Recommendations

2.1 It is recommended that:

Licensing Committee agree to the adoption of such policy and to commend the policy to Council for adoption.

3. Detail

- 3.1 Prior to the new Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018, Local Authorities in England, Scotland and Wales issued licences to proprietors of Kennels, Catteries and Home Boarders under the Animal Boarding Establishments Act 1963.
- 3.2 Under this legislation, anyone who carried out home boarding for dogs as part of a business required an annual licence including an inspection. This included "host" families also known as carers that were part of a wider business model.
- 3.3 This would generally be a main Arranger who would undertake all advertising, applications, payments and then place the dog with a suitable 'host' family. The Arranger could pay the 'host' family a proportion of the boarding fee, expenses only or in some business models, nothing at all.
- 3.4 Under the 1963 legislation, the Licensing Authority would individually license each host family if they received any payment. They received an inspection as part of their licence conditions. If the Arranger was able to provide all paperwork as being the same for each host family, the application fee was reduced as the inspection was simpler to carry out.

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- 3.5 'Host' families that were not paid did not require a licence. It was felt that Arrangers for these premises should be licensed as they received payment for boarding although they were national companies based outside of the Borough so fell out of our remit.
- 3.6 On 1st October 2018 the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 came into force. This replaced multiple pieces of legislation including the Animal Boarding Establishments Act 1963.
- 3.7 DEFRA has published guidance for this including the aspect of what should be considered "in and out of scope" for each activity. For home boarding, they have made it clear that businesses which arrange for the provision of accommodation should be licensed themselves.
- 3.8 DEFRA have stated in communications with Local Authorities that the guidance released is statutory guidance as referred to in Section 14 of the Regulations although it is noted that this is not referred to on the guidance documents themselves. Section 14 of the Regulations states: *A local authority must have regard in the carrying out of its functions under these Regulations to such guidance as may be issued by the Secretary of State.*
- 3.9 DEFRA have produced the "Guidance in relation to licensing of dog boarding franchises": Local Authorities have requested further guidance on how these Businesses should be licensed. In particular Local Authorities have asked if each host should be licensed, if only the central arranging body should be licensed, or if a licence is required from each local authority in which a Business has a host family.
- 3.10 DEFRA's responded that *The policy intention behind the Regulations is that anyone who is undertaking one of the five activities specified in the Regulations in England is licensed. This will ensure that businesses profiting from these activities in England all meet the minimum welfare standards set out in the Regulations. We are aware that under the previous legislative regime (the Animal Boarding Establishments Act 1963) these Businesses used different approaches to licences. Some Businesses asked each of their host families to obtain a licence from their local authority (at significant cost) while other Businesses did not hold a licence at all. The policy intention is for a middle ground between these two existing approaches. Such an approach allows for the proper inspection of activities involving animals in the interests of animal welfare*
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- and accords with the interpretation that businesses should be licensed where they are undertaking such activities.*
- 3.11 *The policy intention is for these Businesses to require a licence from each local authority in which they have host families. The individual host families do not themselves need to be licensed (unless they separately meet the business test in the Regulations). It does not matter how many host families the Business has in each local authority only one licence will be required per area.*
- 3.12 The Business test in the Regulations states that the Authority has to consider if the operator earns any commission or fee from the activity but in the guidance for each activity, it states that the allowance of £1000 for annual trading income should be considered and if the host family falls under this threshold they would not need to be individually. They would however be listed under the licence for the Arranger.
- 3.13 The Authority has questioned this matter with DEFRA at length due to the concerns that it would not be possible to check an operator's trading income for example. Instead a disclaimer has been drawn up for an operator that believes they are out of scope to sign. If evidence can be found that the operator is in fact receiving a higher trading income, this disclaimer could assist with any subsequent investigation and potential action.
- 3.14 With regards to inspections for out of scope premises that are listed on Arranger's licences, the "Guidance for providing home boarding for dogs" states that: *The accommodation provided in these circumstances must meet the conditions in Schedule 2 and 4, and it is the responsibility of the business to ensure that this is the case. The local authority needs to be satisfied that the conditions are met in all of the accommodation provided.*
- 3.15 In addition to this, the "Guidance in relation to licensing of dog boarding franchises" states: *It will be for the individual local authorities to decide what level of inspection they wish to conduct in relation to each licence. Depending on the number of hosts in their area they may wish to inspect all of them or only a selection, they may also wish to cooperate to ensure a consistent approach is taken across local authorities. Beyond the requirement that these Businesses obtain a licence in each local authority in which they operate it will be for each local authority to make an assessment of how best to assess whether the business meets the licence conditions in their area. We do not want to specify a standard approach*
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here as what may work in one local authority may be inappropriate in another.

- 3.16 One of the other changes to the requirements is that the premises will be star rated and can potentially achieve a one, two or three year licence. This will depend on whether they meet the required standards, the higher standards and whether they are considered to be high or low risk. An inspection is only required at the point of applying for a new licence with a further unannounced inspection within the licence period.
- 3.17 The Authority have enquired of DEFRA if unlicensed host families also require an unannounced visit in the licence term, they have been clear that such decisions are a matter for the individual authority to make a decision on.
- 3.18 Whilst the Licensing Manager has delegated authority to consider such operational matters, it is felt most appropriate for this element to be considered by the Licensing Committee and determined as a local policy.
- 3.19 Currently the Borough has several different types of businesses with additional host families. Some are part of a wider national franchise, some of these with head offices in a different area of the country but there are also businesses with a franchise owner in the Borough or indeed non-franchise businesses based solely in this Borough.
- 3.20 The Licensing Authority proposes that each host family be inspected before being used as a premises to board dogs and on each renewal of the Arranger's licence in accordance with Regulation 4(2). It is considered that the only way the Authority can be satisfied the required conditions are met in all of the accommodation provided is by carrying out this proposed frequency of inspections. Previously the properties were inspected on an annual basis so, it could be certain that standards were maintained. With the potential for a three year licence being issued, it is also proposed that host families be included in the requirement for an unannounced visit as otherwise it would potentially be a considerable amount of time between inspections.
- 3.21 It is recognised by the Licensing Authority that some businesses with host families have a more "hands on" approach than others with their own additional inspections and checks carried out. The Licensing Authority welcomes such proactive work by franchises but considers a consistent approach across all business models is necessary to discharge the Authority's responsibility in licensing such premises.

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4. Alternative Options

- 4.1 The Council could decide not to adopt a local policy; however, this would mean that there would be no consistent guidelines when undertaking inspections of proposed and existing establishments and attaching appropriate conditions.

5. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 5.1 There are no direct financial or procurement implications arising from this report, though licences for animal activities do attract a fee, which is considered to be reasonable in ensuring that there is no financial burden on the Council in dealing with, and enforcing consents.

Legal and Human Rights Implications

- 5.2 Legal and Human Rights considerations have been taken fully into account in compiling this report. It is considered that the recommendations of this report are compatible with Convention Rights. The Council is required to comply with the statutory provisions referred to in the report. All other legal and human rights implications have been considered in the preparation of this report.

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 5.3 There are no other implications

Diversity Impact Assessment

- 5.4 A DIA has been completed and is available on request

6. Consultees

- 6.1 The Board Director, Resources (Section 151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted in respect of all reports.
- 6.2 All Licensed Animal Boarding Establishments within the borough

7. Background Papers

- 7.1 Animal Boarding Establishments Act 1963

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- 7.2 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018
 - 7.3 Procedural guidance notes for local authorities – October 2018
 - 7.4 Guidance in relation to licensing of dog boarding franchises - October 2018
 - 7.5 Guidance notes for conditions for providing home boarding for dogs – November 2018
 - 8. Appendices**
 - 8.1 None