

<b>REPORT TO:</b>	<b>LICENSING COMMITTEE</b> <b>23 NOVEMBER 2021</b>
<b>SUBJECT:</b>	<b>DANGEROUS WILD ANIMALS ACT 1976 – Setting of Licence Fees</b>
<b>LEAD OFFICER:</b>	<b>Interim Corporate Director – Sustainable Communities, Regeneration and Economic Recovery</b>
<b>CABINET MEMBER:</b>	<b>COUNCILLOR MANJU SHAHUL-HAMID</b> <b>Communities, Safety &amp; Business Recovery</b>
<b>WARDS:</b>	<b>ALL</b>
<b>CORPORATE PRIORITY/POLICY CONTEXT:</b> The local authority may stipulate a fee which in the authority's opinion is sufficient to meet the direct and indirect costs which it may incur as a result of an application under the legislation.	
<b>FINANCIAL SUMMARY:</b> The Council is the Licensing Authority for the purposes of the Dangerous Wild Animals Act 1976 (the 'Act'). The Act permits the Council to charge such a fee which is, in its opinion sufficient to meet the direct and indirect costs which the Council may incur as a result of an application under the legislation.	
<b>FORWARD PLAN KEY DECISION REFERENCE NO.: N/A. Not an Executive Decision.</b>	

**For general release**

<p><b>1. RECOMMENDATIONS</b></p> <p>The Committee is recommended to:</p> <p>1.1 Adopt the new fee structure set out at Appendix 2 to this report. The new fee structure has been determined on the principle of cost recovery</p> <p>1.2 Delegate to the Director of Sustainable Communities, in consultation with the Chair of the Licensing Committee, authority to undertake reviews of fees and fee setting under the Dangerous Wild Animals Act 1976. Such delegation does not preclude the Director from bringing the matter back before the Committee should the Director or the Chair consider it appropriate to do so.</p>
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1.3 Delegate to the Director of Sustainable Communities, in consultation with the Chair of the Licensing Committee, authority to make decisions regarding the determination of applications, including decisions as to whether to vary or revoke any condition attached to a licence. Such delegation does not preclude the Director from bringing the matter back before the Committee should the Director or the Chair consider it appropriate to do so.

## 2. EXECUTIVE SUMMARY

- 2.1 Any person that wishes to keep any animal listed in the Schedule to the Dangerous Wild Animals Act 1976 must obtain a Dangerous Wild Animals Licence from the Council as the local Licensing Authority. A copy of the current list of animals in respect of which a licence is required is at Appendix 1.
- 2.2 Croydon Council currently licences one dangerous wild animal keeper and this has been the position for a number of years. Licenses are issued for a period of two years.
- 2.3 The Council is entitled to charge a fee for an application under the legislation based on the principle of cost recovery.

## 3. DETAIL

- 3.1 Subject to certain exemptions, no person shall keep any dangerous wild animal except under the authority of a licence granted by a local authority in accordance with the provisions of the Dangerous Wild Animals Act 1976. A local authority shall not grant a licence under this Act unless an application for it:
- (a) specifies the species (whether one or more) of animal, and the number of animals of each species, proposed to be kept under the authority of the licence;
  - (b) specifies the premises where any animal concerned will normally be held;
  - (c) is made to the local authority in whose area those premises are situated;
  - (d) is made by a person who is neither under the age of 18 nor disqualified under this Act from keeping any dangerous wild animal; and
  - (e) is accompanied by such fee as the authority may stipulate (being a fee which is in the authority's opinion sufficient to meet the direct and indirect costs which it may incur as a result of the application).**
- 3.2 Licensing is an integral part of councils' broader regulatory services. While economic growth is a priority for every council in the country, there is also the need to ensure that licensing regimes can continue to protect communities and visitors; manage public health risks; and remain responsive to local concerns. All of this work requires funding and it is 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. However, in setting the fees under this and many other Licensing regimes which the Council is required to operate, the Council is required to have regard to a number of different considerations and legislative requirements and

parameters, including in relation to the European Services Directive (“the Directive”). This Directive, which remains applicable in the UK despite the UK leaving the EU, aims to make it easier for service and retail providers to establish a business anywhere within Europe. It includes the principle of ensuring that regulation is transparent and that the burdens placed on businesses are kept to a minimum. The legal requirements in the Directive do have practical implications for local licensing regimes, including fee setting.

- 3.3 The general principles of the Services Directive apply to all processes and administrative procedures that need to be followed when establishing or running a service or retail business, including the setting, charging and processing of fees for licences. The core principles of the Directive – non-discriminatory; justified; proportionate; clear; objective; made public in advance; transparent and accessible – apply to fee setting.
- 3.4 Whilst the majority of the principles are self-explanatory, in the context of fee setting, the principle of ‘non-discrimination’ requires a little more explanation. In the Directive it is defined as meaning ‘the general conditions of access to a service, which are made available to the public at large by the provider [and] do not contain discriminatory provisions relating to the nationality or place of residence of the recipient’.
- 3.5 This applies to the Council when considering fee setting meaning that all applicants must be treated equally irrespective of location and/or nationality. The Council should not, for instance, seek to subsidise businesses operating in one geographical area by offering comparatively lower fees than required of those operating in another. Such an approach discriminates against those businesses located elsewhere in the locality.
- 3.6 In the licensing context, the importance of this approach has also been established by case law on taxi and PHV (Private Hire Vehicles) licensing. *Cummings v Cardiff* ruled that the charges within a licensing regime for different categories of licence should not subsidise each other; so a surplus gained on hackney carriage licences should not reduce the cost of a private hire vehicle licence. Guidance in this area indicates that this analogy be extended to mean that the fees received under one licensing regime must not subsidise fees charged under another. For instance, a surplus generated by taxi fees must be reinvested back into taxi licensing and not used to reduce the cost of, for instance, a scrap metal dealer’s licence.
- 3.7 Under the Directive councils need to ensure that details of any fees are easily accessible online, including the ability to make payments online. Councils should be able to separate out the cost of processing an initial application from those costs associated with the ongoing administration of a scheme, because this latter element cannot be charged to unsuccessful licence applicants.
- 3.8 This was a key issue in the *Hemming v Westminster* case, in which the Supreme Court asked the European Court of Justice (ECJ) to rule on how Westminster applied its licence fees. The Supreme Court identified two different approaches to charging fees:
  - (a) Whereby a council charged a fee upon application (covering the costs of authorisation procedures) and a subsequent fee to successful applicants

(covering the cost of administering and enforcing the framework) - the 'type A' approach.

(b) Where a council charged a single fee on application covering all costs, on the basis that the relevant proportion of the fee would be refunded to unsuccessful applicants – the 'type B' approach.

- 3.9 The ECJ published its ruling on the issue on 16 November 2016, following an earlier opinion by the Advocate General in July 2016. The ECJ ruled that the type B approach of fee setting is not compatible with the Services Directive, arguing that the Directive 'precludes the requirement for the payment of a fee, at the time of submitting an application for the grant or renewal of an authorisation, part of which corresponds to the costs relating to the management and enforcement of the authorisation scheme concerned, even if that part is refundable if that application is refused.'
- 3.10 Therefore, in setting the current fees the Council will need to ensure that the fee structures for fees covered by the Services Directive relate solely to the cost of authorisation procedures (i.e. the costs associated with reviewing an application and granting/refusing a licence). Under the type A approach, on which the Supreme Court ruling is still relevant, successful licence applicants could subsequently be charged an additional fee relating to the costs of administering and enforcing the relevant licensing framework. Not all legislation in England and Wales permits councils to separate out elements of the fee in this way. For instance, the Licensing Act 2003 has fees set nationally, which constrains councils' ability to adopt this approach. However, Section 1 (2) (e) of the Act provides that the Council may charge a fee that:
- 'in the authority's opinion is sufficient to meet the direct and indirect costs which it may incur as a result of the application.'*
- 3.11 The Directive also includes specific requirements that apply to the charging of fees. Charges must be reasonable and proportionate to the cost of the processes associated with a licensing scheme. Councils must not use fees covered by the Directive to make a profit or act as an economic deterrent to deter certain business types from operating within an area
- 3.12 The Guidance anticipates that fees should be broadly cost neutral in budgetary terms, so that, over the lifespan of the licence, the budget should balance. Those benefitting from the activities permitted by the various licences should not, so far as there is discretion to do so, be subsidised by the general fund.
- 3.13 To ensure that fees remain reasonable and proportionate it is necessary to establish a review process. Reviews allow for the fine tuning of fees and allow the Council to take steps to avoid either a surplus or deficit in future years. This will not immediately benefit licence holders where the licence has been granted for a number of years and paid for in a lump sum, but will ensure for new entrants to the licensing scheme or on renewal, that the most appropriate fees are charged. It is for this reason, and due to the fact that it will entail an administrative assessment of the costs to be recovered rather than an engagement of discretion by Members', that a delegation is sought to the Director of Sustainable Communities to undertake reviews and fee setting under the Act in future. Such delegation should not preclude the Director from

bringing the matter back before the Committee should the Director consider it appropriate to do so. In addition, if members are minded to agree the delegation, exercise of this delegation could be reported back to members for information following the annual fee review.

- 3.14 The Council must have regard to the guidance issued by the Secretary of State in carrying out its functions under the Act. The “Procedural guidance notes for Local Authorities” issued by DEFRA in July 2018 is relevant in relation to the setting of fees for Dangerous Wild Animals Licensing and provides as follows at paragraph 59:

*“59. When setting fees, local authorities should have regard to Open for business: LGA guidance on locally set licence fees, which sets out the steps that must be taken to set fair and reasonable fees, and explains the EU Services Directive upon which the LGA guidance is based. Local authorities should also have regard to the BEIS Guidance for Business on the Provision of Services Regulations. As with other areas of licensing, regard should also be had to the principles in the Regulators’ Code. “Reasonable anticipated costs” will be fact specific and dependent on the local authority in question. The “Open for business: LGA guidance on locally set licence fees” guidance includes information on what could be considered reasonable.”*

- 3.15 In this regard, the LGA guidance makes a number of suggestions as to which elements (subject to legislative restrictions) the Council may wish to consider including within the fees set. In accordance with the Case law set out above, these suggested fees are broken down into two separate elements: initial application costs (“Application fee”) and further compliance and enforcement costs (“Grant/Enforcement fee”).

- 3.16 The Guidance suggests that initial application costs (“Application fee”) could include:

- Administration – this could cover basic office administration to process the licence application, such as resources, photocopying, postage or the cost of handling fees through the accounts department. This could also include the costs of specialist licensing software to maintain an effective database, and printing licences.
- Initial visit/s – this could cover the average cost of officer time if a premises visit is required as part of the authorisation process. Councils will need to consider whether the officer time includes travel. It would also be normal to include ‘on-costs’ in this calculation. Councils will need to consider whether ‘on costs’ include travel costs and management time.
- Third party costs – some licensing processes will require third party input from experts, such as veterinary attendance during licensing inspections at animal related premises. This is true of Dangerous Wild Animal Licensing where the Council may not grant a licence without the benefit of a report from a veterinary surgeon or veterinary practitioner authorised by the authority to do so under section 3 of the Act who has inspected the premises where any animal will normally be held in pursuance of the licence and the authority has received and considered a report by the surgeon or practitioner

- Liaison with interested parties – engaging with responsible authorities and other stakeholders will incur a cost in both time and resources.
- Management costs – councils may want to consider charging an average management fee where it is a standard process for the application to be reviewed by a management board or licensing committee. However, some councils will include management charges within the ‘on-costs’ attached to officer time referenced below.
- Local democracy costs – councils may want to recover any necessary expenditure in arranging committee meetings or hearings to consider applications.
- On costs – including any recharges for payroll, accommodation, including heating and lighting, and supplies and services connected with the licensing functions. Finance teams should be able to provide a standardised cost for this within each council.
- Development, determination and production of licensing policies – the cost of consultation and publishing policies can be fully recovered where they pertain to the licensing regime in question.
- Web material – the EU Services Directive requires that applications, and the associated guidance, can be made online and councils should effectively budget for this work.
- Advice and guidance – this includes advice in person, production of leaflets or promotional tools, and online advice.
- Setting and reviewing fees – this includes the cost of time associated with the review, as well as the cost of taking it to a committee for approval.

3.17 The Guidance suggests that further compliance and enforcement costs (“Grant/Enforcement fee”) could include:

- Additional monitoring and inspection visits – councils may wish to include a charge for risk based visits to premises in between licensing inspections and responding to complaints. As with the initial licensing visit, councils can consider basing this figure on average officer time, travel, administration, management costs and on costs as suggested above.
- Local democracy costs – councils may want to recover any necessary expenditure in arranging committee meetings or hearings to review existing licences or respond to problems.
- Registers and national reporting – some licensing schemes require central government bodies to be notified when a licence is issued. The costs of doing this can be recovered.
- Charging for action against unlicensed traders Councils’ ability to charge for these costs as part of a licensing scheme depends on the licensing scheme in question.

3.18 There is a disadvantage to current operators in increasing the fees. There is also the risk that increasing the licence fees may encourage unlicensed activity and thereby increase risk to animal welfare. An increase in unlicensed activity

would require additional reactive investigation and enforcement by officers.

- 3.19 In setting the proposed fees, an hourly rate for the role(s) that will undertake the task(s) has been calculated. This is the 'on costed' hourly rate for the particular role(s) that perform the task(s) and this also includes basic office administration such as resources, photocopying, postage, processing fees through the accounts department, recharges for payroll, accommodation, including heating and lighting, supplies and services connected with the licensing functions and management and supervision costs (where relevant). Appendix 2 then sets the associated processes out into a series of tasks and the relevant hourly rate was then multiplied by the amount of time, in minutes, that it was considered, based on previous experience that the individual tasks of that nature would take to complete. In addition, there are also fixed inspection fees for veterinary staff that have been factored in. These figures were then added together to give a recommended fee for Members' consideration. Members will note that the proposed fees have been split between application and enforcement parts. When someone applies for a licence, they will be asked to pay the application portion when they apply (Application fee – Part A) and then, if their application is granted, they will be asked to pay the enforcement part (Grant/Enforcement fee – Part B) prior to the licence being issued to them.
- 3.20 In light of the above referenced guidance and requirements on Council officers, Members are asked to consider Appendix 2 which also sets out the overall fees for dangerous wild animal keepers, which are recommended for approval.
- 3.21 Unlike some licensing regimes, where the Council may receive objections to applications for licenses which ought properly to be considered and determined by Councillors, the Dangerous Wild Animals legislation does not make the same provision in respect of objections to applications/renewals, nor does it have a similar regime around responsible authorities seeking to review such licenses. Currently the Council only has one dangerous wild animals licence and it is not anticipated that this number will increase.
- 3.22 It is proposed that the decisions regarding the determination of new applications, renewals and variations & revocations of conditions be delegated to the Director of Sustainable Communities. Where an applicant or existing licence holder is dissatisfied with the outcome of an application for a licence or a decision to vary or revoke a condition, there is a right of appeal to the magistrates' court.
- 3.23 Guidance regarding fee setting considerations can be accessed via the below links:

LGA Guidance:

[https://local.gov.uk/sites/default/files/documents/5%2013%20%20OpenForBusiness\\_02\\_web.pdf](https://local.gov.uk/sites/default/files/documents/5%2013%20%20OpenForBusiness_02_web.pdf)

BEIS guidance:

<http://webarchive.nationalarchives.gov.uk/20121205034810/http://www.bis.gov.uk/files/file53100.pdf>

Regulator's Code:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300126/14-705-regulators-code.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf)

3.25 A local authority shall not grant a licence under this Act unless a veterinary surgeon or veterinary practitioner authorised by the authority to do so under the Act has inspected the premises where any animal will normally be held in pursuance of the licence and the authority has received and considered a report by the surgeon or practitioner, containing such particulars as in the authority's opinion enable it to decide whether the premises are such that any animal proposed to be kept under the authority of the licence may suitably be held there, and describing the condition of the premises and of any animal or other thing found there.

#### **4. CONSULTATION**

4.1 There are no statutory consultation or advertisement requirements with regard to fee setting under the Dangerous Wild Animals Act 1976.

#### **5. FINANCIAL CONSIDERATIONS**

5.1 The Council is entitled to calculate fees that will generate income to offset the estimated cost to the Council of providing the service. The estimated income from the proposed fee structure will offset the cost of the service which is calculated via standard hourly rates.

#### **6. COMMENTS OF THE SOLICITOR TO THE COUNCIL**

6.1 The Solicitor to the Council comments that the relevant legislation governing Dangerous Wild Animals is the Dangerous Wild Animals Act 1976 ("the Act") which provides variously that no person shall keep any dangerous wild animal except under the authority of a licence granted in accordance with the provisions of the Act by a local authority.

6.2 A local authority shall not grant a licence under this Act unless an application for it—

- (a) specifies the species (whether one or more) of animal, and the number of animals of each species, proposed to be kept under the authority of the licence;
- (b) specifies the premises where any animal concerned will normally be held;
- (c) is made to the local authority in whose area those premises are situated;
- (d) is made by a person who is neither under the age of 18 nor disqualified under this Act from keeping any dangerous wild animal; and
- (e) is accompanied by such fee as the authority may stipulate (being a fee which is in the authority's opinion sufficient to meet the direct and indirect costs which it may incur as a result of the application)(Section 1(2)).

- 6.3 A local authority shall not grant a licence under this Act unless it is satisfied that—
- (a) it is not contrary to the public interest on the grounds of safety, nuisance or otherwise to grant the licence;
  - (b) the applicant for the licence is a suitable person to hold a licence under this Act;
  - (c) any animal concerned will at all times of its being kept only under the authority of the licence—
    - (i) be held in accommodation which secures that the animal will not escape, which is suitable as regards construction, size, temperature, lighting, ventilation, drainage and cleanliness and which is suitable for the number of animals proposed to be held in the accommodation, and
    - (ii) be supplied with adequate and suitable food, drink and bedding material and be visited at suitable intervals;
  - (d) appropriate steps will at all such times be taken for the protection of any animal concerned in case of fire or other emergency;
  - (e) all reasonable precautions will be taken at all such times to prevent and control the spread of infectious diseases;
  - (f) while any animal concerned is at the premises where it will normally be held, its accommodation is such that it can take adequate exercise. (Section 1(3))
- 6.4 Subject to subsections (2) to (5) of section of the Act, a local authority may grant or refuse a licence under this Act as it thinks fit, but where it decides to grant such a licence it shall specify as conditions of the licence—
- (a) conditions that, while any animal concerned is being kept only under the authority of the licence,—
    - (i) the animal shall be kept by no person other than such person or persons as is or are specified (whether by name or description) in the licence;
    - (ii) the animal shall normally be held at such premises as are specified in the licence;
    - (iii) the animal shall not be moved from those premises or shall only be moved from them in such circumstances as are specified in the licence;
    - (iv) the person to whom the licence is granted shall hold a current insurance policy which insures him and any other person entitled to keep the animal under the authority of the licence against liability for any damage which may be caused by the animal; and
    - (v) the terms of any such policy shall be satisfactory in the opinion of the authority;
  - (b) conditions restricting the species (whether one or more) of animal, and number of animals of each species, which may be kept under the authority of the licence;
  - (c) a condition that the person to whom the licence is granted shall at all reasonable times make available a copy of the licence to any person entitled to keep any animal under the authority of the licence;
  - (d) such other conditions as in the opinion of the authority are necessary or desirable for the purpose of securing the objects specified in paragraphs (c) to (f) of subsection (3) of section 1 (Section 1 (6)).

(Approved by: Sandra Herbert, Head of Litigation and Corporate Law, for and on behalf of, Director of Law and Governance and Deputy Monitoring Officer)

## **7. HUMAN RESOURCES IMPACT**

7.1 The workload associated with this report has been undertaken within existing resources.

## **8. EQUALITIES IMPACT**

8.1 There are no perceived inequalities associated with this legislation.

## **9. ENVIRONMENTAL IMPACT**

9.1 The licensed animal welfare premises in Croydon are not considered to adversely impact on the local environment.

## **10. CRIME AND DISORDER REDUCTION IMPACT**

10.1 There are not considered to be any local crime and disorder problems associated with the local authority having responsibility for the administration of licences under the Dangerous Wild Animals Act 1976

## **11. DATA PROTECTION IMPLICATIONS**

11.1 **WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?**

**NO**

The Director of Sustainable Communities comments that agreeing the recommendations in this report will not result in the processing of personal data.

(Approved by: Steve Iles, Director of Sustainable Communities

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**CONTACT OFFICER:** Michael Goddard, Head of Environmental Health, Trading Standards and Licensing Tel. Ext. 61838

**BACKGROUND DOCUMENTS:** None

### **Appendices:**

Appendix 1 - current list of animals in respect of which a DWA licence is required

Appendix 2 – fee workings and proposed fees