

REPORT TO: STRATEGY & RESOURCES COMMITTEE

Date: 5 August 2019

**TOPIC: PROPOSED AMENDMENTS TO DANGEROUS WILD ANIMAL
AND ZOO LICENSING FEES**

REPORT BY: PUBLIC PROTECTION MANAGER

1 INTRODUCTION

- 1.1 The purpose of this report is to recommend approval of a new set of fees for zoo licences and licences for the keeping of dangerous wild animals.
- 1.2 Fees currently set are disproportionately low, and do not allow the Council to adequately recover costs. Moreover, the structure of the fees currently in place does not reflect the recent case of Hemmings v Westminster City Council. This report suggests a new Part A and B fee breakdown.

2 RECOMMENDATIONS

- 2.1 That Strategy and Resources Committee consider the following recommendation made by Licensing and Community Safety Committee during their meeting of the 18 June 2019:

that following the consideration of the draft fees for zoo licences and licences for keeping dangerous wild animals, which had undergone a period of consultation and for which no representations had been received, the Strategy and Resources Committee amend the fees in line with the proposals set out in appendix A of the report.

- 2.2 That Strategy and Resources Committee forward a recommendation to Full Council that the fees identified in appendix A are approved with immediate effect.

3 REASONS FOR RECOMMENDATIONS

- 3.1 Recent legislative changes surrounding animal welfare licensing have created a position whereby there is a lack of consistency surrounding the way the Council's animal licensing fees are calculated, and in respect of the level of fee income recovered.
- 3.2 Fees approved under The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 are now comparatively high compared to the fees set under the Zoo Licensing Act 1981 and Dangerous Wild Animals Act 1976.
- 3.3 The Council is not in a position to achieve a satisfactory level of cost recovery for licences

issued under the Zoo Licensing Act 1981 and the Dangerous Wild Animals Act 1976, to the point where the tax payer is currently subsidising this regime.

- 3.4 Increases are recommended to ensure that fees under these pieces of legislation are proportionate compared to the fees approved under The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018, and that they are fair and justified according to the legislative framework. Moreover, the structure of the fees currently in place does not reflect the recent case of *Hemmings v Westminster City Council*, and any new fee should reflect a Part A and B breakdown.
- 3.4 It is appropriate to highlight the very substantial increases in fees proposed. This should be tempered by the fact that licences are for periods in excess of one year, but nonetheless the increases suggested in order to better gain cost recovery are significant.
- 3.5 Due to the current budgetary pressures on the Council the fee table attached at **Appendix A** is recommended for adoption, however it is only fair to highlight the potential option to continue to subsidise fees. Members must consider the viability surrounding this based on the Council's budget and consider the impact on tax payers.
- 3.6 Despite consultation being undertaken by way of the Council's Consultation Finder on its website, and additionally through written correspondence to the three zoos within the district no representations have been made.

4 REPORT

- 4.1 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 came into effect on the 1 October 2018, which provided a series of substantial updates to animal licensing; modernising and streamlining a number of previous Acts and Regulations. This legislative change prompted a fee update for applications encompassed under the regime, for example dog breeders, and boarders, selling animals as pets, hiring out of horses etc. Two areas of animal legislation falling outside scope of the above and regulated by the Council include zoo licences and licences for keeping dangerous wild animals. As such the current position is that the fees for these areas remain un-amended and disproportionate to the new animal licence fees.
- 4.2 The Council currently licence three zoos, which include Ilfracombe Aquarium, Combe Martin Dinosaur and Wildlife Park, and Exmoor Zoo. There are no licences in relation to the keeping of dangerous wild animals. Members should note that a Zoo Licence covers these establishments to hold dangerous wild animals and thus an additional licence for keeping these animals is not required.
- 4.3 Both the fees for zoos and dangerous wild animal licensing are 'locally set', meaning that fees are not prescribed by statute. These fees have not been amended for a significant period. It is now necessary to review both fees to ensure that the Council better recover its costs. Locally set fees are a vital means of ensuring that costs can be recovered by local authorities rather than relying on a subsidy from local tax payers. Businesses that benefit from zoo licences and licences for keeping dangerous wild animals should be asked to pay any reasonable costs incurred by the local authority in providing that licence. However they must also be able to depend on the local authority fees being fair and reasonable.
- 4.4 When setting the fees, local authorities should have regard to the Open for Business: LGA Guidance on Locally Set Licence Fees, and the BEIS Guidance for Business on the Provision of Service Regulations and principles in the Regulators' Code which sets out the

steps that must be taken to set fair and reasonable fees. These documents have been considered when formulating those fees recommended for approval.

- 4.5 In December 2009 the Services Directive, Provision of Services Regulations 2009, made in compliance with Directive 2006/123/EC of the European Parliament, was introduced. Article 13(2) of the Directive states that any licence fees which applicants incur under a licensing scheme must be reasonable and proportionate to the cost of the 'authorisation procedures'. This means that councils may not make any profit from charging applicants for licence applications or from regulating individual licensing functions.
- 4.6 Traditionally local authority fees charged for licences have included the costs of processing the application, and the costs of monitoring and enforcing against unlicensed and licensed operators. Until now, application fees have been payable in full at the time of making an application and unsuccessful applicants have been eligible for a refund of a proportion of the fee paid, subject to the Council's costs of processing the application.
- 4.7 However, in the case of *Hemmings v Westminster City Council* which examined the level of fees for Sex Shop licences in Westminster and what the Council was legally entitled to include when setting the fees, the Supreme Court and the European Court of Justice clarified what local authorities could include when setting licence fees. The courts also concluded that the licence fee was essentially made up of two parts; the first part for the direct costs of processing an application, and the second part for the costs associated with running the licensing function. The latter element included monitoring and enforcement of licensed and unlicensed premises, and this should be reflected in how the fees are charged. The second part of the fee should only be payable if a licence is granted.
- 4.8 The fees must be reasonable and proportionate to cover the cost of processing the procedures and formalities associated with the relevant licensing function, and they must accurately reflect the actual costs incurred by the Council. In view of the *Hemmings* decision the proposed fees attached at **Appendix A** have been calculated in two parts, A and B. Part A is to cover the direct costs associated with processing the application to the point where a decision is made, and if appropriate a licence is issued. This fee would be payable in full on submission of the application, and is non-refundable.
- 4.9 Part B is to cover the ongoing costs associated with running the licensing function, including the supervision and monitoring of licensed premises and the enforcement activity for any unlicensed premises. This fee would only become payable if a licence is granted, and would need to be paid before the licence becomes operational. It is proposed that a condition would be imposed on relevant licences, '*that the licence shall be of no effect and the premises may not operate until the Part B fee has been received by the Council*'.
- 4.10 In calculating and administering the fees consideration must be made to a number of important underlying principles. Namely that:
 - 4.10.1 Local authorities should:
 - 4.10.1.1 Recover any reasonable costs of administering and enforcing each licence.
 - 4.10.1.2 Charge separately for application processing and enforcement.
 - 4.10.1.3 Continue to seek service improvements to help reduce costs for businesses.

- 4.10.1.4 Use evidence based data whenever possible as the basis for their fee charges, and retain this information for the purposes of transparency.
- 4.10.1.5 Ensure that when a surplus or loss is gained that the fees are re-evaluated and if necessary reduced/increased the following year. Fee calculations (or parts of them) may be based on predicted licence numbers and complaints etc., and therefore factors such as an increase in licensed premises, would mean that pro-rata costs are lower. Similarly there may be service efficiencies or cost savings that would need to be passed on. Losses may occur where there are unexpected levels of enforcement, or appeals and prosecutions through the courts for which costs are awarded, unexpected increases in equipment etc.
- 4.10.1.6 Clearly communicate with applicants the elements that make up the fee.

4.10.2 Local authorities should not:

- 4.10.2.1 Charge for matters that do not relate directly to that licence, for example Freedom of Information and Data Protection requests.
- 4.10.2.2 Seek to make a profit.
- 4.10.2.3 Charge for prosecution costs that are covered by costs awarded to the authority.
- 4.10.2.4 Use a surplus from one year to subsidise another.
- 4.10.2.5 Allow fees income to be drawn into the Council's general fund.

- 4.11 The main cost associated with the fees calculated is in respect of officer time. Officer time includes direct and indirect costs. Direct costs include wages, pension contributions, National Insurance, etc. On-costs include the reasonable costs of providing heating and lighting in the office, general IT, photocopying, and other administrative services. They include business support such as Customer Services, Legal Services and HR. It is believed that using staff rates with on-costs is the fairest way to recoup these costs. Licence applications that take very little time will pay less and the more complex applications will pay more. Financial Services have advised on hourly rates of staff and these have been used in preparing the calculations.
- 4.12 The fee currently set for zoo and dangerous wild animal licences is £71.10. A review of these fees has not been undertaken for a considerable period and therefore the Council has been significantly under-recovering fees from this licensed community.
- 4.13 The fee for a licence for keeping dangerous wild animals relates to a licence period of two years, and the fee for a zoo licence relates to either a period of four years for a newly granted zoo licence, or a six year period for a renewed licence. **Appendix A** contains the fees proposed. Calculations in respect of keeping dangerous wild animals are contained at **Appendix B** and zoo licensing at **Appendix C**.

Dangerous Wild Animals

- 4.14 Section 1(2) of the Dangerous Wild Animals Act 1976 (as amended) stipulates that:

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

(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).

4.15 In light of the above a decision has been made to produce a fee for the grant of a licence only (which also encompasses renewals, these are deemed a grant in this legislation). No separate fees have been produced for transfer or variation etc., as they do not appear to be catered for, albeit that it is considered that the indirect costs associated with the application will include any variation to conditions imposed. The costs of veterinary fees will be in addition to the Part A and B licence fees, and invoiced according to the true costs borne by the authority.

Zoo Licensing

4.16 Section 15 (1) of The Zoo Licensing Act 1981 stipulates that:

(1) Subject to this section, the local authority may charge such [reasonable]¹ fees as they may determine in respect of—

(a) applications for the grant, renewal or transfer of licences;

(b) the grant, renewal [, alteration]¹ or transfer of licences;

[...]¹

(2) Any fee charged under paragraph (a) of subsection (1) in respect of an application shall be treated as paid on account of the fee charged under paragraph (b) on the grant, renewal or transfer applied for.

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(2A) Subject to this section, the authority may charge to the operator of the zoo such sums as they may determine in respect of reasonable expenses incurred by them—

(a) in connection with inspections in accordance with section 9A and under sections 10 to 12;

(b) in connection with the exercise of their powers to make directions under this Act;

(c) in the exercise of their function under section 16E(4) of supervising the implementation of plans prepared under section 16E(2); and

(d) in connection with the exercise of their function under section 16E(7) or (8).

(2B) The authority's charge under subsection (2A)(d) shall take into account any sums that have been, or will fall to be, deducted by them from a payment under section 16F(7) in respect of their costs.

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(3) In respect of any fee or other sum charged under this section, the local authority may, if so requested by the operator, accept payment by instalments.

(4) Any fee or other charge payable under this section by any person shall be recoverable by the local authority as a debt due from him to them.

(5) The local authority shall secure that the amount of all the fees and other sums charged by them under this section in a year is sufficient to cover the amount of [reasonable]¹ expenditure incurred by the authority in the year by virtue of this Act.

¹ Amended by Zoo Licensing Act 1981 (Amendment) (Wales) Regulations 2003/992 Sch.1 para.16 (April 22, 2003)

4.17 Section 15, which is outlined above, deals with the financial aspects of the licensing and inspection system, issuing directions and disposing of animals. In the above legislation Section 9A refers to the procedure relating to inspections before the grant, refusal, renewal or significant alteration of licences; Section 10, periodical inspections; Section 11, special inspections; Section 12 informal inspections; and Section 16E covers the welfare of animals following closure of a zoo.

- 4.18 Local authorities have the power to charge such reasonable fees as they may determine in respect of applications for the grant, renewal, or transfer of licences and subsequent action. Local authorities may also charge for reasonable expenses incurred by them in respect of inspections. This charge includes both the costs incurred by the local authority in appointing their own inspectors under sections 9A, 10(4)(a)(i), 11 and 12, and the costs incurred in meeting the cost of services and expenses of those inspectors appointed by the Secretary of State. The local authority may, if so requested by the zoo operator, accept payments by instalments (section 15(3) refers).
- 4.19 Local authorities are also entitled to recover such costs as are reasonably incurred in issuing directions under the Act and exercising their duties for treating and disposing of animals in accordance with section 16E of the Act (the welfare of animals following closure of a zoo). These costs have been encompassed within the proposed calculation as being invoiced pro rata according to the officer time spent plus any additional veterinary fees according to the invoice. Similarly special inspections are proposed to be invoiced in the same way. These will vary widely in terms of the costs to the authority as they may be undertaken for a number of reasons, e.g. an animal escape.
- 4.20 Under section 15(5) the local authority are required to ensure that the amount of all fees and other sums charged in a particular year is sufficient to cover the reasonable expenditure incurred by the authority in that year by virtue of the Act. Guidance suggests that local authorities make every endeavour to ensure that charges are kept to a minimum in meeting this obligation and are also reminded that it is not within their powers to levy fees and charges which exceed the costs incurred in administering their duties under the Act. In the case of inspectors, local authorities are advised to negotiate rates for fees not exceeding those payable to persons on the Secretary of State's list.
- 4.21 In calculating the fees outlined in **Appendix A** (see **Appendix C** for a full breakdown) consideration has been made to those zoos with and without dispensation. Section 14 of the Zoo Licensing Act 1981 provides the Secretary of State with powers to relax the requirements of the act for a small zoo or for a zoo exhibiting only a small number of different kinds of animals.
- 4.22 Section 14(1)(b) has been acknowledged within the calculation. This Section allows the Secretary of State to issue a direction to the effect that either a periodical or special inspection or both (but not an informal or licence inspection) shall not be required, hence the fee is reduced. Section 14(2) allows the Secretary of State to direct that the periodical inspection is to be carried out only by the inspector or inspectors appointed and therefore this will be reflected by a reduced veterinary fee.
- 4.23 Section 9A(2) allows the local authority to use an inspection provided for under Section 10 (a periodical inspection) instead of section 9A (inspections before the grant, refusal, renewal or significant alteration of licences) where the Section 10 inspection is due within 12 months of when arrangements for the Section 9A inspection would be made. By making use of this power, the need for two inspections in close proximity, and associated costs, can be removed. Local authorities are encouraged to combine inspections in this way unless there are good reasons not to do so, and therefore combined inspections have been factored into the calculations which have been drafted.

Consultation

- 4.24 A report in respect of the draft fees contained in **Appendix A** appeared before Licensing Committee on the 5 February 2019. Members approved a period of consultation on the proposed fees, and following this meeting the draft fees appeared on the Council's Consultation Finder between 11 February 2019 and the 30 April 2019. Moreover, specific

letters were sent to the three licensed zoos in the district. No representations have been submitted.

5 RESOURCE IMPLICATIONS

- 5.1 There is no additional workload associated with this report.
- 5.2 Additional income from those zoos currently licensed is expected should the proposed amendments to the fees be approved, albeit as per the provisions of the legislation and guidance, this will only allow the Council to better recover the costs of its administration and enforcement.
- 5.3 Over a period of five years it is estimated that (if the draft fees are approved) an additional £4.7K will be received from zoo licensing applications. No new applications for zoos or dangerous wild animal premises are envisaged to be received over this five year period.

6 CONSTITUTIONAL CONTEXT

Article or Appendix and paragraph	Referred or delegated power?	Key decision?
Part 3, Annex 1, Paragraph 1	Delegated	No

7 STATEMENT OF CONFIDENTIALITY

- 7.1 This report contains no confidential information or exempt information under the provisions of Schedule 12A of 1972 Act.

8 BACKGROUND PAPERS

- 8.1 The following background papers were used in the preparation of this report:

- Dangerous Wild Animals Act 1976
- Zoo Licensing Act 1981
- DEFRA (2012), Zoo Licensing Act 1981, Guide to the Act's Provisions.
- LGA, Guidance on Locally Set Licence Fees, 2018.
- BEIS Guidance for Business on the Provision of Services Regulations, October 2009.

The background papers are available for inspection and kept by the author of the report.

9 STATEMENT OF INTERNAL ADVICE

- 9.1 The author (below) confirms that advice has been taken from all appropriate Councillors and officers.

Author: Katy Nicholls

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