BOROUGH OF BARROW-IN-FURNESS LICENSING REGULATORY COMMITTEE

Meeting, Thursday 15th October, 2015 at 2.00 p.m. (Drawing Room)

AGENDA

PART ONE

- 1. To note any items which the Chairman considers to be of an urgent nature.
- 2. To receive notice from Members who may wish to move any delegated matter non-delegated and which will be decided by a majority of Members present and voting at the meeting.
- 3. Admission of Public and Press

To consider whether the public and press should be excluded from the meeting during consideration of any of the items on the agenda.

4. Declarations of Interest.

To receive declarations by Members and/or co-optees of interests in respect of items on this Agenda.

Members are reminded that, in accordance with the revised Code of Conduct, they are required to declare any disclosable pecuniary interests or other registrable interests which have not already been declared in the Council's Register of Interests. (It is a criminal offence not to declare a disclosable pecuniary interest either in the Register or at the meeting).

Members may however, also decide, in the interests of clarity and transparency, to declare at this point in the meeting, any such disclosable pecuniary interests which they have already declared in the Register, as well as any other registrable or other interests.

- 5. Apologies for Absence/Attendance of Substitute Members.
- 6. To confirm the Minutes of the meeting held on 3rd September, 2015 (copy attached).

FOR DECISION

(D) 7. Zoo Licensing Act 1981 (as amended) - Zoo Licence for South Lakes Safari Zoo Ltd (formerly South Lakes Wild Animal Park Ltd)
Compliance with Conditions 9 and 14 – further information received.

(D) 8. Zoo Licensing Act 1981 (as amended) - South Lakes Safari Zoo Ltd Site Visit to Inform Members of the Design and Layout of South Lakes Safari Zoo.

PART TWO

(D) 9. Complaints against Private Hire Driver and Former Private Hire Operator.

NOT FOR PUBLICATION BY VIRTUE OF PARAGRAPH 1 OF PART ONE OF SCHEDULE 12A OF THE LOCAL GOVERMMENT ACT 1972 AND ACCESS TO INFORMATION (VARIATION) ORDER 2006

NOTE (D) - Delegated

(R) - For Referral to Council

Membership of Committee

Callister (Chairman)
Seward (Vice Chairman)
Biggins
Bleasdale
Derbyshire

Heath

W. McClure

Maddox

Opie

Proffitt

Wall

One Vacancy

For queries regarding this agenda, please contact:

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BOROUGH OF BARROW-IN-FURNESS LICENSING REGULATORY COMMITTEE

Meeting: Thursday 3rd September, 2015 at 2.00 p.m. (Drawing Room)

PRESENT:- Councillors Callister (Chairman), Seward (Vice-Chairman), Biggins, Bleasdale, Derbyshire, Heath, Maddox, Opie, C. Thomson and Wall.

Officers Present:- Jane Holden (Acting Principal Legal Officer), Anne Pearson (Environmental Health Manager), Jennifer Curtis (Senior Licensing Officer), Richard Garnett (Principal Environmental Health Officer) and Keely Fisher (Democratic Services Officer).

Legal Representative – Mr Paul O'Donnell.

16 – The Local Government Act, 1972 as amended by the Local Government (Access to Information) Act, 1985 and Access to Information (Variation) Order 2006

Discussion arising hereon it was

RESOLVED:- That under Section 100A(4) of the Local Government Act, 1972 the public and press be excluded from the meeting for the following item of business on the grounds that it involved the likely disclosure of exempt information as defined in Paragraph 1 (Minute No. 21) of Part One of Schedule 12A of the said Act.

17 - Declarations of Interest

Councillor Heath declared a prejudicial interest in Agenda Item No. 7 - Zoo Licensing Act 1981 (as amended) – Setting an Application/Renewal Fee for a Zoo Licence 2015/16 (Minute No. 20) and Agenda Item No. 8 - Zoo Licensing Act 1981 (as amended) – Policy to Achieve Full Cost Recovery in Respect of Premises Licensed under the Zoo Licensing Act 1981 (Minute No. 22). She was a friend of Mr Gill, South Lakes Safari Zoo Ltd. She left the meeting during consideration of both of these items.

18 - Apologies for Absence/Attendance of Substitute Members

Apologies for absence had been submitted from Councillors W. McClure and Proffitt.

Councillor C. Thomson had replaced Councillor Proffitt for this meeting only.

19 - Minutes

The Minutes of the Licensing Regulatory Committee meeting held on 23rd July, 2015 and the Special Meeting held on 13th August, 2015 were taken as read and confirmed.

20 - Zoo Licensing Act 1981 (as amended) - Application/Renewal Fee Setting for the Zoo Licence 2015/16

The Principal Environmental Health Officer reported that Barrow Borough Council was responsible for administering a range of licences, permits and registrations resulting from both national legislation and discretionary functions that were agreed locally. In most cases the costs incurred by Councils in administering and sometimes enforcing these regimes could be recovered through fees set by each council. Locally set fees were a vital means of ensuring that costs could be recovered by Councils, rather than relying on local tax payers subsidising licence holders.

The basis in setting such fees was generally to ensure full cost recovery, or as close to it as was possible. Numerous legal cases over the years had confirmed that licensing fees may not be used to generate a profit for Councils, and that fees should be reviewed regularly (generally annually) to ensure that neither a significant surplus nor deficit was created. Surpluses or deficits were to be carried forward to future years to be redistributed or recouped, as applicable.

Many Licensing Schemes fell within the definition of 'services', under the EU Services Directive, as incorporated by the Provision of Services Regulations 2009. For such schemes, fees and charges must "be reasonable and proportionate to the cost of the procedures and formalities under the scheme and must not exceed the cost of those procedures and formalities". The recent case of R (on the application of Hemming (t/a Simply Pleasure Ltd)) v Westminster City Council had examined this issue, and confirmed that fees must reflect administrative and compliance costs, but could not include the costs of enforcement action against unlicensed operators.

The Council was enabled by Section 15(1)(a) of the Zoo Licensing Act 1981 to charge a fee for the application and renewal of a licence. Further, under Section 15(5) the Local Authority shall secure that the amount of all fees ... was sufficient to cover the reasonable expenditure incurred... Section 15 was attached as an appendix to the report.

The methodology document behind the setting the application/renewal fee for a Zoo licence was also attached as an appendix to the report. Referring to this the Principal Environmental Health Officer explained to the Committee that the column in the table referring to "direct staff costs per licence general" along with the cost of £24.62 should be removed as it had been entered in error. This figure had not bee included in the total of £500.

It was proposed that the fees for 2015/16 be:-

An application fee of £500 for any application received in 2015/16 for a new licence or the renewal of an existing licence.

A public consultation had been carried in the North West Evening Mail and the proposals were also available to view at the Town Hall and on the Council's website.

No specific responses were received regarding the application fee.

Mr Gill of South Lakes Safari Zoo Ltd along with his representative, Mr Walker attended the meeting to make representations to the Committee.

The Environmental Health Manager, Principal Environmental Health Officer, Senior Environmental Health Officer along with Mr Gill and Mr Walker withdrew from the meeting whilst the Committee conducted their decision making discussions.

RESOLVED:- To agree to the application fee for all new Zoo Licences and renewals of £500.

21 - Complaints Against Private Hire Operator and Driver

The Principal Environmental Protection and Licensing Officer reported on complaints he had received from members of the public against a Private Hire Operator and Driver. He submitted information which had been drawn to his attention concerning the Operator and Driver and set out details of the Committee's policy regarding such matters.

The Operator and Driver attended the meeting to address the Committee.

The Chairman informed the Committee that following publication of the report, two further complaints had been made. He suggested to the Committee that as the Operator and Driver had not had the opportunity to look at the further complaints that this item be adjourned until a later date to enable a fair hearing. The Chairman asked the Operator and Driver if he was happy for the Committee to adjourn this item, to which he agreed.

The Environmental Health Manager, Senior Environmental Health Officer, Principal Environmental Health Officer and the Operator and Driver withdrew from the meeting whilst the Committee conducted their decision making discussions.

RESOLVED:- That consideration of the report be adjourned until a later date to enable a fair hearing.

REFERRED ITEM

THE FOLLOWING MATTERS ARE REFERRED TO COUNCIL FOR DECISION

22 – Zoo Licensing Act 1981 (as amended) – Policy for Fee Setting Applicable to all Zoo Licences

The Principal Environmental Health Officer reported that Barrow Borough Council was responsible for administering a range of licences, permits and registrations resulting from both national legislation and discretionary functions that were agreed locally. In most cases the costs incurred by Councils in administering and sometimes enforcing these regimes could be recovered through fees set by each council. Locally set fees were a vital means of ensuring that costs could be

recovered by Councils, rather than relying on local tax payers subsidising licence holders.

The basis in setting such fees was generally to ensure full cost recovery, or as close to it as possible. Numerous legal cases over the years had confirmed that licensing fees may not be used to generate a profit for councils, and that fees should be reviewed regularly (generally annually) to ensure that neither a significant surplus nor deficit was created. Surpluses or deficits were to be carried forward to future years to be redistributed or recouped, as applicable.

Many Licensing schemes fell within the definition of 'services', under the EU Services Directive, as incorporated by the Provision of Services Regulations 2009. For such schemes, fees and charges must "be reasonable and proportionate to the cost of the procedures and formalities under the scheme and must not exceed the cost of those procedures and formalities". The recent case of R (on the application of Hemming (t/a Simply Pleasure Ltd)) v Westminster City Council had examined this issue, and confirmed that fees must reflect administrative and compliance costs, but could not include the costs of enforcement action against unlicensed operators.

The Council was enabled by Section 15 Zoo Licensing Act 1981 to charge fees and other charges in respect of a Zoo Licence. In addition to regular inspections there were a number of other cost implications, such as administering the licence, enforcing licence conditions, preparing Committee reports, and considering emerging issues, which were currently unrecovered.

A document which demonstrated the methodology behind the setting of the Zoo Licence fee was attached as an appendix to the report.

The Owner of a Zoo would be charged:-

- An application fee which was payable when an application was lodged with the Council. This would be the administrative costs of processing an application for an initial licence renewal, alteration or transfer.
- A Maintenance fee which would become payable before the grant of the licence and would then be charged annually on the anniversary of the grant. The Maintenance fee would be kept under review and set annually based on the work undertaken in the previous year to ensure that fees set remained reasonable and proportionate.

Members noted that it was not the purpose of this report to set the actual fees. The Application Fee was being set in an additional report before the Committee. However it had been necessary to include the application fee in this policy because it needed to include all aspects of the application and renewal of a Zoo Licence. If the policy was accepted then a Maintenance Fee would be brought back to this Committee for approval at a later date.

The Policy had been subject to a 14 day consultation period. An advert had also placed in the North West Evening Mail and full consultation details made available on the Council's website inviting representations.

All responses received had been included as an appendix to the report. South Lakes Safari Zoo Ltd was the only consultee to comment on the policy.

South Lakes Safari Zoo's points (in bold) were as follows:-

1. Preamble, Paragraph 2, Page 2 of the policy document

The intention of this policy is to set out how the Council will recover the cost of enforcing the Zoo Licensing Act 1981 from those premises that are required to hold a licence. The presence of this policy is in order to promote transparency, fairness and consistency. It is acknowledged that there is only one Zoo business operating in the Council's area of authority and it is further recognised that relations between the owner of that business and the Council have not always been harmonious. The Council is committed to ensuring that its application of this policy is fair and proportionate and free of any taint of bias and that the Council acts in a manner consistent with other local authorities who administer licences and approvals for Zoo businesses.

2. Preamble, Paragraph 3, Page 2 of the policy document

The Zoo Owner shall be charged.

A reasonable and proportionate application fee ...

A reasonable and proportionate maintenance fee ...

The insertion of the words **reasonable and proportionate** has also been made at Section 4 Page 3 under **Legislative Background** within the consultation reply.

3. Preamble, Paragraph 4, Page 2 of the policy document

Charges must be reasonable and proportionate to the cost of the processes associated with the licensing scheme and having regard to the provisions of the second paragraph above.

4. Purpose, Section 2, Page 3 of the policy document

It is intended to provide a proportionate, fair and transparent approach to the recovery of costs from those persons or companies who are required to hold a licence under the Act, and remove the burden from Council's finances and ultimately local taxpayers **whilst not penalising Zoo businesses**.

5. The Policy, Section 5, Page 4 of the policy document

The recovery of the costs incurred by the Council for the administration of zoo licensing works shall:

- (a) Where possible, be sought from the applicant or licence holder.
- (b) Be recovered in full where reasonable.
- (c) Be as fair and equitable as possible to all who may otherwise have to meet the costs of including national and local taxpayers **but also the**

Zoo business, which the Council recognises provide a very significant source of tourist and other income for the Furness area.

6. Cost Setting, Section 6, Page 4 of the policy document

The Maintenance Fee will include:-

- Third party costs,
- Liaison with interested parties
- Liaison with Central Government
- Management Costs
- Local democracy costs committee hearings
- On costs
- Advice and guidance relating to those matters which may properly be charged to the Zoo business pursuant to legislation
- Relevant training of staff and members.

7. Variation in Maintenance Costs, Section 7, Page 5 of the policy document

The annual maintenance fee will be based on cost recovery for the time spent in the previous 12 months if those figures are available. Therefore, if the level of compliance of a zoo is high then the corresponding reduction in the maintenance fee will reflect this.

- (1) Both the application and the maintenance fee will be set only after consultation with Zoo businesses.
- (2) The Council will give due regard to any representations made by Zoo businesses and shall afford Zoo businesses a means of appeal or redress if there are any disputes over the level of fees charged.

8. Method of Fee Calculation

In the consultation a Maintenance Fee together with the calculation method was produced. The calculation method and final fee is not part of the policy. The Zoo, have stated that making the zoo pay for the cost of legal advice relating to issues with the zoo is outwith the permitted framework.

The Environmental Health Manager, the Principal Environmental Health Officer, the Senior Environmental Health Officer along with Mr Gill and Mr Walker withdrew from the meeting whilst the Committee conducted their decision making discussions.

RECOMMENDED:- (i) That the Policy be adopted with the amendments suggested by South Lakes Safari Zoo Ltd as follows:-

- Cost Setting, Section 6, Page 4 of the Policy Document (Point 6 above); and
- Variation in Maintenance Costs, Section 7, Page of the Policy Document (Point 7.1 above):

- (ii) That the amendments suggested by South Lakes Safari Zoo Ltd are not included in the Policy as follows:-
- Preamble, Paragraph 2, Page 2 the Policy Document (**Point 1 above**);
- Preamble, Paragraph 3, Page 2 of the Policy Document (Point 2 above);
- Preamble, Paragraph 4, Page 2 of the Policy Document (Point 3 above);
- Purpose, Section 2, Page 3 of the Policy Document (Point 4 above);
- The Policy, Section 5, Page 4 of the Policy Document (Point 5 above);
- Variation in Maintenance Costs Section 7 Page 5 of the Policy Document (Point 7.2 above); and
- (iii) That the Zoo's comments regarding the method of fee calculation (**Point 8** above) be noted at this time.

The meeting closed at 4.10 p.m.

	<u>Part One</u>
LICENSING REGULATORY COMMITTEE	(D) Agenda Item 7
Date of Meeting: 15th October, 2015	
Reporting Officer: Principal Environmental Health Officer	

Title: Zoo Licensing Act 1981 (as amended)

Zoo Licence for South Lakes Safari Zoo Ltd (formerly South

Dart One

Lakes Wild Animal Park Ltd)

Compliance with Conditions 9 and 14 - further information

received

Summary & Purpose of the Report

Mr David Stanley Gill holds a zoo licence issued on 8th June, 2010 to operate a Zoo at premises known as South Lakes Safari Zoo Ltd, Crossgates, Dalton-in-Furness, Cumbria LA15 8JR.

On 13th August, 2015, the Licensing Regulatory Committee considered a report outlining non-compliance with conditions 9 and 14 of the zoo licence in respect of a male Nyala arriving at the zoo without the required pre-notification to the Licensing Authority. Members therefore resolved to:

- a) Note that the Zoo had breached both conditions; and
- b) Instructed Officers to write to the Zoo on behalf of the Committee to state that future breaches would be considered for prosecution under the Zoo Licensing Act 1981 section 19(2)

On 22nd August 2015 the Zoo contacted Officers to confirm that incorrect information had initially been passed to the Licensing Authority and that in fact the Zoo had previously held similar animals in the same taxonomic group.

Members are therefore invited to re-consider compliance with conditions 9 and 14 in line with the Officer recommendations included in the body of the report.

Background

Mr David Stanley Gill holds a zoo licence issued on 8th June, 2010 to operate a zoo at premises known as South Lakes Safari Zoo Ltd, Crossgates, Dalton-in-Furness, Cumbria, LA15 8JR [the Zoo]. That licence contains 2 conditions relating to the addition of new animals to the collection.

Condition 9 - The Licensing Authority shall be notified in writing at least one month in advance of the proposed addition of any animal listed in Category 1 of the Hazardous Animal

categorisation (see Appendix 12 of the Secretary of State's Standards of Modern Zoo Practice) which is from a taxonomic family of which Category 1 species have not previously been kept in the zoo.

Such notification shall include all plans and strategies necessary to safely contain any such animal. All such notifications, plans and strategies shall be approved by the Licensing Authority and fully implemented and in place prior to the arrival at the Zoo of any animal detailed in the notification.

Condition 14 -

In the event of the licence holder adding new species of animals hazardous to those already exhibition/collection the licence holder must ensure that the staff managing such animals have achieved a satisfactory degree of competence. Such competence should be derived from a period of training, by those keepers who will be responsible for the care of animals, undertaken in another zoo or similar institution which has experience of and has at the time, examples of such animals in the collection. This period of training should be appropriate to the species acquired, agreed with the Licensing Authority and be followed by written endorsement by a responsible person from whom the training has been derived.

On Monday 30rh March, 2015 the Council were informed by email that a male Nyala was due to be delivered to the Zoo on Wednesday 1st April, 2015 and that they had not held this animal before therefore Conditions 9 and 14 were relevant. This gave the Council 48 hours' notice.

Under Condition 9 of the licence the addition of any animal, classified as Category 1 under Appendix 12 of the SSSMZP, which is from a **taxonomic family** of which Category 1 species have not previously been kept in the zoo, should be notified to the Local Authority one month in advance of the addition. This is in order for Council Officers to satisfy themselves that the animal welfare and public safety issues surrounding the introduction of such an animal have been considered.

Under Condition 14 of the licence the addition of any new **species** of hazardous animal should result in the Council agreeing to an appropriate and endorsed training regime. Thus adequate pre-notification is also required to obtain the necessary agreement.

Members considered the Zoo's non-compliance with these two conditions at a Committee meeting on 13th August, 2015 and resolved to:

- a) Note that the Zoo had breached both conditions; and
- b) Instructed Officers to write to the Zoo on behalf of the Committee to state that future breaches would be considered for prosecution under the Zoo Licensing Act 1981 section 19(2)

After the Committee's decision, the Licensing Authority were advised that the Zoo had passed incorrect information on to the Licensing Authority initially, and that they had in fact previously held similar animals (antelope) in the same taxonomic group in the years 1999 and 2000. This has been confirmed by Council Officers through reviewing stock lists for the said years.

As a result Officers can confirm that Condition 9 was not breached, however Condition 14 has still been breached because despite the Zoo having antelope before, the Nyala is a new **species** to the Zoo and they did not obtain the prior agreement from the Licensing Authority with regard to endorsed, appropriate training.

Officer Recommendation

- That it be recorded that the Zoo have not breached Condition 9 of their licence as reported on 13th August, therefore no further action is required.
- That it be recorded that Condition 14 has been breached but to take no further action at this time

Reason for Recommendation

The Zoo has provided information demonstrating that the introduction of the Nyala did not require notification under condition 9 because they had previously held antelope of the same taxonomic group.

Regarding Condition 14, although there is a breach as the Nyala are a new species to the zoo, it has been confirmed that appropriate training relating to antelopes was in place by the Council's Veterinary Advisor Mr Matthew Brash

Options

The options available to Members are:-

- Accept the officer recommendation in this report which supersedes the decision made on 13th August, 2015
- Reject the officer recommendation in this report and record that the decision made on 13th August, 2015 still stands

Considerations

(i) Legal Implications

The Zoo requires a licence to be able to open to the public and the Zoo Licencing Act 1981 makes the local authority responsible for administering the Licence. Anyone running a Zoo without a licence is guilty of an offence.

The Local Authority's power to alter a licence is contained within Section 16 of the same Act

(1) At any time after the grant of a licence under this Act, it may be altered by the local authority if in their opinion it is necessary or desirable to do so for ensuring the proper conduct of the zoo during the period of the licence (whether their opinion arises from an inspectors' report or an alteration of standards specified under section 9 or otherwise).

There is a right of appeal under Section 18 to the Magistrate's Court if the holder of the licence wishes to challenge the decisions of the Committee.

The Council have the power to prosecute for a failure to meet a Licence Condition under Section 19 of the Act

(ii) Risk Assessment

Not Applicable

(iii) Financial Implications

The Council may be subject to an appeal against the Committee's decision in the Magistrates' Court under Section 18 of the Zoo Licensing Act 1981.

(iv) Key Priorities or Corporate Aims

None identified

(v) Equality and Diversity

Not Applicable

(vi) Other Human Rights

Not Applicable

(vii) Health and Well-being Implications

None identified

Background Papers

Current Zoo Licence held by South Lakes Safari Zoo Limited
Table of Decision from Licensing Regulatory Committee 13th August, 2015

Title: Zoo Licensing Act 1981 (as amended)

South Lakes Safari Zoo Ltd

Site Visit to Inform Members of the Design and Layout of

South Lakes Safari Zoo

Summary & Purpose of the Report

South Lakes Wild Animal Park was started in 1994 and since that time has developed into South Lakes Safari Zoo. Visitor numbers are in excess of 250,000 per year and in 2015 a planned extension was opened representing a large increase in the area covered and an increase in the number of species held.

Members of the Committee consider reports regarding the Zoo's compliance with its licence and are requested to make judgements on the basis of officer recommendations and representations from the Zoo without necessarily appreciating the layout, size, and complexity of the operation.

It is proposed that the Members undertake a site visit in order to gain an understanding of the recent expansion, and layout of the Zoo.

Background

South Lakes Wild Animal Park was opened in 1994 at a fraction of the size that it currently is today. It has an extensive mixed collection and has recently opened a major expansion which has allowed the introduction of new species and provided more facilities for the animals and the public. The Zoo currently covers over 30 acres and in 2014 attracted over 250,000 visitors.

Currently trading as South Lakes Safari Zoo it is run by the founder David Gill who is still involved in the day to day running alongside a new team of Directors.

The Zoo is licenced by the Council under the Zoo Licencing Act 1981 and is subject to regular inspections. The results of these inspections are presented to this Committee along with any officer recommendations to vary license conditions, impose Direction Orders, or take such other action as may be appropriate. Whilst the Zoo are entitled to address the Committee on these issues it is sometimes difficult for one who hasn't visited recently to understand the size of the Zoo, it's layout, and the relationship of one area to another.

It is therefore proposed that the Committee attend a site visit to familiarise themselves with the Zoo. The site visit is to be managed in a similar way to the site visits undertaken by the Planning Committee and will be a fact finding visit. There will not be an opportunity to discuss matters of concern with either Officers or the Zoo.

The Zoo has been approached about the visit and David Gill has stated "They wholeheartedly welcome this suggested visit and will do all we can to assist."

Recommendation

It is recommended that Officers arrange for a site visit of the Zoo to be undertaken by all members of the Licensing Regulatory Committee.

Reason for Recommendation

The Zoo has expanded and Members should be aware of the size and layout of the Zoo in order to make an informed decision when matters are presented to them. This will be of benefit to the Members and by helping them visualise a complex area. There will also be a benefit to the public and the Zoo themselves, having confidence in the Council's decision making in knowing that the Committee have a broad knowledge of the layout and operational aspects of the zoo.

Options

The options available to Members are:-

- Accept the officer recommendation for the Committee to undertake a site visit.
- Reject the officer recommendation and determine that no visit is necessary.

Considerations

(i) Legal Implications

The Committee is in a strengthened position if any decisions made are done so with knowledge of the current site size, design, and layout

(ii) Risk Assessment

Not Applicable

(iii) Financial Implications

The Council may be subject to an appeal against the Committee's decision in the Magistrates' Court under Section 18 of the Zoo Licensing Act 1981.

(iv) Key Priorities or Corporate Aims

None identified

(v) Equality and Diversity

Not Applicable

(vi) Other Human Rights

Not Applicable

(vii) Health and Well-being Implications

None identified

Background Papers

Nil.