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**TITLE: MEMBER REQUEST TO INVESTIGATE NEIGHBOUR  
CONSULTATION AND NOTIFICATION MECHANISM AS PART OF  
APPLICATION PROCESS FOR THE HOME BOARDING OF DOGS**

Committee: Licensing Committee

Date: 16 May 2012

Author: Elizabeth Bailey, Principal Environmental Health Officer (Commercial)

[L373]

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## **1.0 ISSUE**

1.1 To consider the advice received relating to the Member request regarding the possibility of introducing a neighbour consultation and notification scheme during the application process for a home boarding establishment licence.

## **2.0 RECOMMENDATION(S)**

- a) That Members do not introduce a neighbourhood consultation process at the application stage for Home Boarding Establishments for the reasons set out in this report at paragraph 3.4 and 3.5 and Appendix 2.
- b) That Members note the advice provided by the Local Government Regulation (LGR) Companion Animal Focus Group, a specialist branch of LACORS, at paragraph 3.13 of this report and Appendix 3, concerning the request to investigate whether a neighbourhood consultation process at the application stage for Home Boarding establishments could be established.
- c) That on receipt of an application for the home boarding of dogs by the Licensing Department, that the Licensing Department notify the Council's Planning Department as a matter of course.

## **3.0 BACKGROUND/OPTIONS**

3.1 Within the Animal Boarding Establishments Act 1963 there are no specific provisions within the Act for the establishment of neighbourhood consultation as part of the application process.

3.2 Section 1 (2) of the Animal Boarding Establishments Act 1963 states that on application for a Animal Boarding licence that a Local Authority may '*grant a licence to that person to keep a boarding establishment for animals at such premises in their area as may be specified in the application and subject to compliance with such conditions as may be specified in the licence*'.

- 3.3 Section 1 (3) of the Act states that *'in determining whether to grant a licence for the keeping of a boarding establishments for animals by any person at any premises, a local authority shall in particular (but without prejudice to their discretion to withhold a licence on other grounds) have regard to the need for securing -*
- (a) *that animals will at all times be kept in accommodation suitable as respects construction, size of quarters, number of occupants, exercising facilities, temperature, lighting, ventilation and cleanliness;*
  - (b) *that animals will be adequately supplied with suitable food, drink and bedding material, adequately exercised, and (so far as necessary) visited at suitable intervals;*
  - (c) *that all reasonable precautions will be taken to prevent and control the spread among animals of infectious or contagious diseases, including the provision of adequate isolation facilities;*
  - (d) *that appropriate steps will be taken for the protection of the animals in case of fire or other emergency;*
  - (e) *that a register be kept containing a description of any animals received into the establishment, date of arrival and departure, and the name and address of the owner, such register to be available for inspection at all times by an officer of the local authority, veterinary surgeon or veterinary practitioner authorised under section 2(1) of this Act; and shall specify such conditions in the licence, if granted by them, as appear to the local authority necessary or expedient in the particular case for securing all the objects specified in paragraphs (a) to (e) of this subsection'.*
- 3.4 Legal advice received has advised that although a neighbourhood consultation exercise could be introduced under the new general power of competence under the Localism Act 2011, a neighbourhood consultation exercise would not be compatible with the EU Services Directive for authorisation procedures and it is therefore recommended that the neighbourhood consultation exercise is not introduced.
- 3.5 The EU Services Directive obliges the EU countries to examine all legislation and practices that regulate service provision (which would include the proposed neighbourhood consultation) and check whether discriminatory, unnecessary or disproportionate provisions, which act as a barrier to operating in that country, exist. Where rules and requirements cannot be justified they must be amended or repealed. A detailed advice note on this matter is attached as Appendix 2.
- 3.6 Section 1(4) of the Act states that *'Any person aggrieved by the refusal of a local authority to grant such a licence, or by any condition subject to which such a licence is proposed to be granted, may appeal to a magistrates' court; and the court may on such an appeal give such directions with respect to the issue of a licence or, as the case may be, with respect to the conditions subject to which a licence is to be granted as it thinks proper.'*

- 3.7 Section 1 (3) of the Act could potentially be used to refuse a licence, where for example, noise complaints have been received about licensed premises. Section 1 (3) states that 'in determining whether to grant a licence for the keeping of a boarding establishment for animals by any person at any premises, a local authority shall in particular have regard to (*but without prejudice to their discretion to withhold a licence on other grounds*)'
- 3.8 Should an application be refused using Section 1 (3) of the Act, on the ground of perceived or potential noise or similar nuisance (i.e: '*other grounds*'), an aggrieved person can appeal to the Magistrates Court under the Animal Boarding Establishments Act 1963. In such circumstances, where an appeal is made against the decision of the District Council to withhold a licence; in particular in the case of first application; there would be no evidence to demonstrate that a noise nuisance exists; or indeed that the presence of the establishment would cause disturbance. This would leave the District Council at risk of losing an appeal and having costs awarded against them.
- 3.9 At the renewal stage of a licence, the Local Authority could seek to use the provision contained within Section 1 (3) of the Act to '*withhold a licence on other grounds*' if there was a noise nuisance issue, provided that there was evidence to support and justify the decision to withhold the licence. This decision could still be challenged by the Licensee in a Magistrates' Court under Section 1(4) of the Act but there would be less risk to the District Council, as there would need to be objective evidence to support the decision to withhold the licence.
- 3.10 Legal Advice received has advised that a condition could not be attached to an Animal Boarding Licence relating to noise as it would not fall within the requirements of Section 1(3) that a condition can only be attached to the licence '*as appear to the local authority necessary or expedient in the particular case for the securing of all the objects specified in paragraphs (a) to (e) of this subsection*'. Within subsections (a) to (e) there is nothing in these subsections, which would permit a condition to be attached to deal with noise issues.
- 3.11 Outside the scope of the Animal Boarding Establishments Act 1963 there are legislative provisions that can specifically deal with noise and nuisance; namely Part 3 of the Environmental Protection Act, 1990. Should allegations of noise disturbance be brought to the attention of the Local Authority, these would be investigated, with a view to resolve the allegations of noise disturbance.
- 3.12 There have been no complaints made to the Council in relation to noise from the existing licensed Home Boarding establishments. Because of the nature of Home Boarding, due to person(s) being present when dogs are being home boarded, dogs are less likely to cause noise disturbance, unlike for

example, where dogs are left unattended whilst their owners are out at work. Condition 5.8.1 requires a person to always be on site *'A fit and proper person with relevant experience must always be present on site to exercise supervision and deal with emergencies whenever dogs are boarded at the premises. This person must not have any convictions or formal cautions for any animal welfare related offences.'*

3.13 Having liaised with the Council's Planning Department, it has been confirmed that home boarding establishments do not require planning permission where material change of use has not occurred. Due to the way in which home boarding and commercial boarding is regulated; home boarding does not permit structures to be erected to house dogs; which in itself is a major factor in determining whether there is a material change to the property. It is recommended that on receipt of an application by the Licensing Department for a home boarding establishment that the Licensing Department refer detail of the application to the Council's Planning Department so that an assessment of whether Planning Permission is required due to a material change of use (Appendix 3).

3.13 The question of neighbourhood consultation was also raised at the Local Government Regulation (LGR, formerly LACORS) National Companion Animal Focus Group, who state that *'the over riding consensus was that local authorities would not consult with neighbours as part of a home boarding application process in relation to noise issues. They felt this would only lead to reservations/objections being raised that could not be substantiated one way or the other. As with any premise whether it be a home boarder or ordinary household with one dog, the group felt that if there was a genuine noise issue arising from the property that this should be dealt with via the appropriate legislation under the Environmental Protection Act in establishing whether there was a statutory noise nuisance.'*

*In addition the group felt that potential noise issues could be considered at the time of inspection by the local authority and licence conditions amended/ tweaked to suit individual premises to help minimise the likelihood of a noise issue arising in the first place.'* (Chairman of the Animal Focus Group, March 2012)

#### **4.0 ARGUMENTS/CONCLUSIONS**

4.1 Within the Animal Boarding Act 1963 there are no specific provisions to require applicants to notify neighbours of the intention to apply for a boarding licence; both commercial and home boarding.

4.2 Legal advice received has advised that although a neighbourhood consultation exercise could be introduced under the new general power of competence under the Localism Act 2011, a neighbourhood consultation exercise would not be compatible with the EU Services Directive for

authorisation procedures and it is therefore recommended that the neighbourhood consultation exercise is not introduced.

- 4.3 In light of those points raised by the Planning Department and LGR, and the structure of the current Animal Boarding Establishments Act 1963, it is recommended that on receipt of an application by the Licensing Department that the Licensing Department refer details of the application to the Council's Planning Department as a matter of routine.
- 4.4 There have been no noise complaints received in connection with the currently licensed home boarding establishments. Because of the nature of the operation of a home boarding establishment, licensees are required to be on site (Condition 5.8.1), and as such, dogs are accompanied, unlike households where dogs are left unattended whilst persons are out at work.
- 4.5 It is recommended that any allegations of noise disturbance are dealt with through the appropriate existing legislative provisions relating to noise. Where a noise problem is noted, this could be taken into consideration should a renewal application be received by the District Council.

## **5.0 FINANCIAL IMPLICATIONS/EQUALITY IMPACT ASSESSMENT**

- 5.1 There would be financial implications if an aggrieved Applicant exercised their right of appeal to challenge the decision of the District Council to withhold a licence on the basis of perceived noise concerns raised during a neighbourhood consultation process and there was no evidence to support this decision. This District Council would be at risk of having costs awarded against it should the Magistrates Court not uphold the decision of the District Council and grant a licence.
- 5.2 Equality Impact Assessment (INRA) completed. Should a neighbourhood consultation process be introduced, there could be an adverse impact on new applicants, where a licence is refused in relation to unsubstantiated and perceived noise issues that are not evident at the time of application; in addition to increasing sensitivity levels.

## **6.0 APPENDICES**

- 6.1 Appendix 1 Planning advice received from the Council's Planning Department.
- 6.2 Appendix 2 Legal advice
- 6.3 Appendix 3 Local Government Regulation National Companion Animal Focus Group comments
- 6.4 Appendix 4 INRA

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**Background Documents****Location****Contact Officer**

Animal Boarding  
Establishments Act 1963

Room SF209  
The Grange  
Ely

Mrs E A Bailey  
Principal EHO  
(01353) 616243

The Provision of Services  
Regulations 2009  
(SI 2009/2999)

E-mail:  
elizabeth.bailey@eastcambs.gov.uk

Directive 2006/123/EC of  
the European Parliament  
and Council of the 12  
December 2006

Handbook on the  
Implementation of the  
Services Directive

BIS The European Services  
Directive Guidance for  
Local Authorities

### **Home boarding for animals and planning permission**

Condition 1.2 of the LACORS Model Licence Conditions for Home Boarding states that planning permission will not normally be required for the home boarding of animals but the council reserves the right to consider whether planning permission would be required. No further reference is made to the need (or not) for planning permission within the conditions as the rationale behind such an assessment is not based upon the welfare of the animals but is instead based upon whether the operation of a home boarding facility constitutes development under S55 of the Town and Country Planning Act 1990. Planning law relates to the use of land and buildings and is concerned with the impact a form of development may have on the area.

It is likely that the form of development to be considered is whether a material change of use of the planning unit will occur. In cases where the home boarding facility is to be operated from a residential dwelling an assessment has to be made as to whether a material change of use to a mixed residential and animal boarding facility will occur.

When determining whether a material change of use has occurred consideration will be given to whether the domestic character of a particular dwellinghouse has significantly changed. Factors such as the erection of an unusual amount of special structures for the housing of animals in a garden, the employment of others, the generation of substantial amounts of noise, the number of vehicle movements and the size, number and breed of animals being kept assist in determining whether the domestic character of a dwellinghouse has materially changed.

In straightforward terms, a judgement will have to be made on whether the use as a home boarding establishment is significantly different from someone keeping dogs just as pets. This would be looked at as a 'matter of fact and degree'. If there is no difference, then it is unlikely that planning permission would be required. If however, there are an excessive number of extra structures in the garden, or the noise element is disturbing, or there is a significant increase in the number of vehicles visiting the property causing disruption to neighbours, then a different view might be taken. The basic mantra, is that each case is looked at on its own merits, and that includes deciding if a formal application for planning permission is required, and if it is, what the decision on that application should be.

# Memo

**To:** Principal Environmental Health Officer (Commercial)

**From:** Senior Legal Assistant

**Date:** 08/05/2012

**Re:** Licensing Committee Members requested Officers to investigate whether a neighbourhood consultation process could be included as part of the policy decision process before issuing a licence to a prospective home boarding establishment as there were concerns expressed concerning noise

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## Summary advice:

It is my view that a neighbourhood consultation exercise could be introduced under the new "General Power of Competence" under the Localism Act 2011, however for the reasons detailed below I do not think that such a consultation exercise complies with the EU Services Directive for authorisation procedures and should not therefore be introduced.

## Detailed advice:

### Animal Boarding Establishment Act 1963

There is nothing contained within the Animal Boarding Act 1963 ("1963 Act"), which would provide for a neighbourhood consultation to be carried out or that would prevent a neighbourhood consultation process being carried out prior to the issue of the licence. In the absence of a specific guideline on this issue, we can now look to the Localism Act and the General Power of Competence.

### General power of competence

The Localism Act 2011 introduced under section 1(1) the 'general power of competence' this section was brought into force on the 18 February 2012.

Section 1(1) provides that "A Local Authority has power to do anything that individuals generally may do .

Subsection (1) applies to things an individual may do even though they are in nature, extent or otherwise (a) unlike anything the authority may do apart from subsection (1), or (b) unlike anything that other public bodies may do.



The Section 1 'general power of competence' would therefore be the legal basis upon which the neighbourhood consultation could possibly be carried out, however as this question relates to an authorisation process to grant a licence (as a Local Authority) we must also consider the EU Services Directive and the implementing regulations within England being 'The provision of Services Regulations 2009' (known throughout the advice as the 2009 Regulations) and their impact on the proposed neighbourhood consultation process.

## **EU Services Directive**

The Animal Boarding Establishment Act 1963 clearly falls within the scope of the EU Services directive. This can be shown by the BIS website (UK Department for Business Innovation and Skills) links below (attached as Annex A and B), which sets out which UK legislation falls within the scope of the EU Services Directive and also whether any amendments have had to be made to the legislation in order to make it compatible with the EU Services directive.

See page 2 - <http://www.bis.gov.uk/policies/europe/eu-services-directive/legislation-and-implementation/information-for-local-authorities/list-of-formalities>

See page 6 - <http://www.bis.gov.uk/assets/biscore/europe/docs//legislation-list-england-and-wales-services-directive-compliance-2010.pdf>

The second document shows that the Animal Boarding Establishment Act 1963 falls within the scope of the Directive but that the provisions are justified and will be retained, this has been reported to the Commission.

As the EU Services Directive applies this means that if a neighbourhood type consultation process was introduced as part of an "authorisation process" it will have to be done in accordance with the authorisation provisions contained within the Directive and the implementing regulations within England being "The provision of Services Regulations 2009". The essence of the directive is that administrative provisions should be simplified and should not impose unnecessary and disproportionate restrictions unless in accordance with the 2009 Regulations.

The term "authorisation scheme" encompasses any procedure under which a provider or a recipient is in effect required to obtain from a Local Authority (competent authority) a formal decision or an implied decision, concerning

Looking particularly at:

**Article 14** of the 2009 Regs, this requires that the authorisation scheme:

- does not discriminate against providers,
- is justified by an overriding reason relating to the public interest
- and the objective pursued cannot be attained by means of a less restrictive measure, in particular because inspection after commencement of the service activity would take place too late to be genuinely effective.

An “overriding reason relating to the public interest” as defined by Article 4(8) of the EU Services Directive means reasons recognised as such in the case law of the European Court of Justice including the following grounds public policy; public security; public safety; public health; preserving the financial equilibrium of the social security system; the protection of consumers; recipients of services and workers; fairness of trade transactions; combating fraud; the protection of the environmental and urban environment; the health of animals; intellectual property; the conservation of the national and artistic heritage; social policy objectives and cultural policy objectives.

**Article 15** of the 2009 Regulations states that an authorisation scheme...must be based on criteria, which preclude the competent authority from exercising its power of assessment in an arbitrary manner. The criteria must be:

- non-discriminatory
- justified by an overriding reason relating to the public interest
- proportionate to that public interest objective
- clear and unambiguous
- objective
- made public in advance and
- transparent and accessible

#### **Duration of authorisation**

Article 16 (1) An Authorisation granted to the provider of service by a competent authority under an authorisation scheme must be for an indefinite period except where –

(c ) a limited authorisation period can be justified by an overriding reason relating to the public interest.

I have been told that a licence for last for 12 months and I believe such a “period” authorisation could be justified by reason of “the health of animals” as we would want to ensure that the Home Boarding establishments still comply with all the conditions attach to the Home Boarding Licence.

#### **Authorisation schemes: general requirements**

Article 18 (1) Authorisation procedures and formalities provided for by a competent authority under an authorization scheme must-

- be clear
- be made public advance and
- secure that applications for authorisations are dealt with objectively and impartially.

18(2) Authorisation procedures and formalities provided for by a competent authority under an authorisation scheme must not

- be dissuasive or
- unduly complicate or delay the provision of the service

#### **Conclusion**

It would be my view at this moment in time that the consultation process should not be introduced as it has not been justified by reference to an overriding reason

relating to the public interest and I do not think that it is proportionate to the public interest objective to include a neighbourhood consultation process. There have not been any noise complaints raised against existing operators, and there is already existing legislation which covers noise issues, so any noise complaint can be dealt with through the appropriate legislation to deal with noise nuisances.

One of the conditions upon which a licence is granted requires a person to always be present at the house when a dog is being home boarded, therefore any noise issues should be resolved by the person in the house at the time. Under the EU Services Directive and the 2009 Regulations the authorisation procedures are meant to be simplified and should not duplicate issues which are already covered by other legislation. The authorisation procedure should also not dissuade a person from applying for the licence nor unduly complicate or delay the provision of the service, which in my view would occur should a neighbourhood consultation be included within the process. As will be discussed below on an application for the renewal of the Home Boarding Licence should any issues regarding noise have arisen, the Act provides a basis for an application to be refused on the issue of noise as an "other ground" a per s1(3) of the 1963 Act and provided that this was properly justified

### **Conditions attached to Home boarding Licence**

Looking at s1(3) of the 1963 Act this states that "In determining whether to grant a licence for the keeping of a boarding establishment for animals by any person at any premises, a local authority shall in particular (but without prejudice to their discretion to withhold a licence on other grounds) have regard to the need for securing..."

The inclusion of the phrase "but without prejudice to their discretion to withhold a licence on other grounds" indicates that a licence could be refused on the basis of other grounds than those which are listed and relate to section 1(3)(a)-(e). The Legislation therefore provides a basis for an application to be refused on the issue of noise as an "other ground" a per s1(3) and provided that this was properly justified.

It would be my view that a condition could not be attached to an Animal Boarding Licence relating to noise as it would not fall within the requirement of s1(3) that a condition can only be attached to the licence "as appear to the local authority necessary or expedient in the particular case for the securing all the objects specified in paragraphs (a) to (e) of this subsection". Within subsections (a) to (e) there is nothing in these subsections, which would permit a condition to be attached to deal with noise issues.

Philip Hyde "Local Authority Licensing and Registration" p3/306 states in relation to any conditions subject to which a licence is proposed to be granted "The wording of ss4 implies that a Local Authority should give notice to an applicant of the conditions, which it intends to impose on a licence before the licence is granted". This is also a requirement of the EU Services Directive and Article 15 of the 2009 Regulations that authorisation schemes are made public in advance.

Morning Elizabeth

With regards to your query that was discussed at our recent national companion animal focus group, the over riding consensus was that local authorities would not consult with neighbours as part of a home boarding application process in relation to noise issues. They felt this would only lead to reservations / objections being raised that could not be substantiated one way or the other. As with any premise whether it be a home boarder or ordinary household with one dog, the group felt that if there was a genuine noise issue arising from the property that this should be dealt with via the appropriate legislation under the Environmental Protection Act in establishing whether there was a statutory noise nuisance.

In addition the group felt that potential noise issues could be considered at the time of inspection by the local authority and licence conditions amended / tweaked to suit individual premises to help minimise the likelihood of a noise issue arising in the first place

Regards

Mark

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**From:** Gwyneth Rogers [mailto:Gwyneth.Rogers@local.gov.uk]  
**Sent:** Thu 29/03/2012 16:37  
**To:** Elizabeth Bailey; Berry, Mark  
**Subject:** RE: Advice sought regarding Animal Boarding Establishments Act 1963 in relation to Home Boarding

Mark

Please find a further email about the issue that was recently discussed at the CAFG meeting. Are you able to provide confirmation of the discussions that took place?

Elizabeth

For interest, my understanding is that powers under the Localism Act may be of limited use in this instance as they are not designed to be used for additional regulatory activity.

Kind Regards

Gwyneth Rogers  
Senior Adviser (Regulation)  
Local Government Association

Phone: 020 7665 3861  
Email: [gwyneth.rogers@local.gov.uk](mailto:gwyneth.rogers@local.gov.uk)  
Local Government House,  
Smith Square,  
London SW1P 3HZ

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**From:** Elizabeth Bailey [mailto:Elizabeth.Bailey@eastcamb.gov.uk]  
**Sent:** 29 March 2012 17:28  
**To:** Gwyneth Rogers  
**Subject:** FW: Advice sought regarding Animal Boarding Establishments Act 1963 in relation to Home Boarding

Dear Gwyneth

Further to the emails below, please can you confirm the outcome of the Companion Animal Focus Group. We need a response in order to take this back to Committee.

Thank you

Elizabeth Bailey

-----Original Message-----

**From:** Gwyneth Rogers [mailto:Gwyneth.Rogers@local.gov.uk]

**Sent:** 07 March 2012 12:07

**To:** Elizabeth Bailey

**Subject:** RE: Advice sought regarding Animal Boarding Establishments Act 1963 in relation to Home Boarding

Elizabeth

The Companion Animal Focus Group meets next Tuesday, so I will keep you updated on their views.

Kind Regards

Gwyneth Rogers  
Senior Adviser (Regulation)  
Local Government Association

Phone: 020 7665 3861  
Email: [gwyneth.rogers@local.gov.uk](mailto:gwyneth.rogers@local.gov.uk)  
Local Government House,  
Smith Square,  
London SW1P 3HZ

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**From:** Elizabeth Bailey [mailto:Elizabeth.Bailey@eastcambs.gov.uk]

**Sent:** 07 March 2012 11:02

**To:** Gwyneth Rogers

**Subject:** FW: Advice sought regarding Animal Boarding Establishments Act 1963 in relation to Home Boarding

Dear Gwyneth

Further to the email below, please can you advise when the Companion Animal Focus group are to meet to discuss the issues as raised below.

Thank you

Liz

-----Original Message-----

**From:** Sarah Burns

**Sent:** 07 March 2012 08:35

**To:** Elizabeth Bailey

**Subject:** RE: Advice sought regarding Animal Boarding Establishments Act 1963 in relation to Home Boarding

Hi Liz

Have you had any further response from Gwyneth Rogers either from LGA colleagues or from the Companion Animal Focus Group?

thanks, Sarah

**Confidential and subject to Legal Professional Privilege**

-----Original Message-----

**From:** Elizabeth Bailey

**Sent:** 27 February 2012 09:34

**To:** Sarah Burns

**Cc:** Liz Knox

**Subject:** FW: Advice sought regarding Animal Boarding Establishments Act 1963 in relation to Home Boarding

-----Original Message-----

**From:** Gwyneth Rogers [mailto:Gwyneth.Rogers@local.gov.uk]

**Sent:** 26 February 2012 15:08

**To:** Elizabeth Bailey

**Cc:** Susie Child

**Subject:** FW: Advice sought regarding Animal Boarding Establishments Act 1963 in relation to Home Boarding

Elizabeth

Thanks for the query, this is really interesting and you have definitely thought of it from all possible angles. While the legal side is complex, I agree with the factors you have considered.

In slightly more simple terms, the inclusion of a consultation into the licensing process will be governed by the Services Directive and Localism Act. The first of these will really just require a the consultation process to be transparent to applicants from the outset and be linked to one of the exemptions under the Directive. I will check with colleagues in the LGA about any requirements under the Localism Act, which may impact on the consultation process itself. As you can probably anticipate, we have few practical examples of these powers being used as yet but we are looking for case studies.

The inclusion of the conditions following the consultation would be down to whether the boarding legislation permitted this and I have passed this element to our Companion Animal Focus Group for consideration.

I will let you know once I have further feedback.

Thanks.

Kind Regards

Gwyneth Rogers  
Senior Adviser (Regulation)

Local Government Association

Phone: 020 7665 3861

Email: [gwyneth.rogers@local.gov.uk](mailto:gwyneth.rogers@local.gov.uk)

Local Government House,  
Smith Square,  
London SW1P 3HZ

-----Original Message-----

From: Elizabeth Bailey

[mailto:Elizabeth.Bailey@eastcambs.gov.uk]

Sent: 24 February 2012 12:14

To: susie.child@local.gov.uk; [gwyneth.rogers@local.gov.uk](mailto:gwyneth.rogers@local.gov.uk)

Cc: Berry, Mark; Sarah Burns

Subject: Advice sought regarding Animal Boarding  
Establishments Act 1963 in relation to Home Boarding

Dear Susie and Gwyneth,

I have been requested to forward on the following request from our Legal Team.

We took a paper to Licensing Committee, requesting that Members approve proposed licence conditions for the Home Boarding of Dogs from different families. At the meeting, concern was raised about noise issues connected to home boarding establishments and we were asked to investigate whether a neighbourhood consultation process could be implemented on receipt of application for a home boarding establishment.

Please can you provide your thoughts on the request as outlined below.

Request from the Legal Team, East Cambridgeshire District Council.

"East Cambridgeshire District Council's Licensing Committee requested Officers to investigate whether a 'neighbourhood consultation process' could be included as part of the (policy) decision process before issuing a licence to a prospective home boarding establishment' as there were concerns expressed concerning noise problems.

Our Legal Officer's interpretation is that there is nothing within the Animal Boarding Establishment Act 1963 which would prevent a neighbourhood consultation process being carried out

prior to the issue of the licence and that by virtue of s1(3) that a licence could be refused on the basis of noise issues where it states within s1(3) "but without prejudice to their discretion to withhold a licence on other grounds".

With the introduction of the 'general power of competence' under the Localism Act 2011 on the 18 February 2012, this would appear to provide authority for the introduction of a 'neighbourhood consultation process' does Lacors have any views on this?

It is also the Legal Officer's interpretation that a condition could not be attached to an Animal Boarding Licence relating to noise as it would not fall within the requirement of s1(3) that a condition can only be attached to the licence "as appear to the local authority necessary or expedient in the particular case for the securing all the objects specified in paragraphs (a) to (e) of this subsection'. Within subsections (a) to (e) there is nothing in these subsections which would permit a condition to be attached to deal with noise issues. Does Lacors have any view on this?

The nature of any such consultation process could take the form of letters to neighbours, which could be taken into account by the decision maker, that if any adverse comments are received that the matter could then be sent to Committee for a decision. It is noted that the EU Services Directive applies to the Animal Boarding Establishment Act 1963 and therefore that any kind of authorisation process will have to take in account (in particular) Articles 14 and 15 of the EU Services Directive that the authorisation scheme does not discriminate against providers, is justified by an overriding reason relating to the public interest and the objective could not be achieved by a less restrictive measure, proportionate, clear unambiguous, objective, made public in advance, transparent and accessible. Does Lacors have any comments to make on such an authorisation process?"

Thank you for your assistance.

Mrs Elizabeth Bailey  
Principal Environmental Health Officer  
Commercial Team.

East Cambridgeshire District Council  
The Grange, Nutholt Lane, Ely,  
Cambridgeshire, CB7 4EE