

CABINET

Agenda Item: 7

Ward: All

Portfolio: Neighbourhood Services

Report Author(s): Cllr Nigel Taylor

**Meeting Date:
13TH March 2017**

SUBJECT: Adoption of the Control of Horses Act 2015

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Report Sign off	Seen by:	Name	Date
	Chief Executive/ Deputy Chief Executive(s)	Donna Nolan	1.03.17
	Legal	Lesley Dolan	1.03.17
	Finance	Duncan Moss	1.03.17
	Group Manager	Stuart Finney	1.03.17
	Portfolio Holder	Nigel Taylor Philip Ham	1.03.17
	Ward Member(s)		
	Summary:	For members to agree to adopt the provisions of the <u>Control of Horses Act 2015.</u> Once empowered, this will allow abandoned horses to be seized from Mendip District Council (MDC) and Highways land in order to prevent the menace of fly-grazing and protect the public. <i>NB: Please note that this is a discretionary power not a statutory duty.</i>	
Recommendation:	For Cabinet to authorise the Group Manager for Neighbourhood Services to enforce and administer the Control of Horses Act 2015. To grant the Group Manager for Neighbourhood Services the power to authorise such officers within Neighbourhood Services Group and Community Health Group to enforce the Control of Horses Act 2015. <i>NB: Amendments will be made by the Monitoring Officer to the Councils' Constitution and reported to the Council in due course.</i>		

<p>Direct and/or indirect impact on service delivery to our customers and communities:</p>	<p>Fly-grazing is the practice of placing a horse or horses on someone else's land without the permission of the landowner.</p> <p>Over recent years there has been an increase in horses being found grazing on MDC owned land. There has also been an increase in the number of horses at various places around the north east section of the district i.e. predominantly the Frome area. This can occur when horses are left without permission. It is also possible that horses stray onto MDC land without the owner's knowledge. Horses left or straying onto MDC land are often left untethered. MDC sites are not usually bounded by stock-proof fencing, meaning that these horses present a risk to people on the land, and if they 'escape' for example onto nearby roads they may cause serious harm both to themselves and others.</p> <p>Complaints are received regularly from local residents close to where horses are tethered or abandoned. The concerns are often based on the well-being of the horse(s) and the complaints are about the lack of care and perceived neglect. In other instances, horses are left tethered on sites where there is insufficient sustenance for the horse(s) and they are susceptible to harm to themselves or others.</p> <p>Fly-grazing is not limited to MDC owned land. Other local landowners are experiencing similar issues. The issue appears to have increased in the wake of the discovery of horse meat in various food products.</p> <p>Complainants have now turned to their local MP and David Warburton the MP for Frome and Somerton is personally involved and interested in the outcome of this item.</p>
<p>Impact on Service Plans:</p>	<p>Our principal customers are all the people of Mendip, residents and businesses. Secondly we serve tourists and other visitors to Mendip. Proving that MDC embraces legislation and enforces all aspect of the law will show strong governance.</p>
<p>Value for Money:</p>	<p>If the recommendation is accepted the next steps include the procurement of a horse bailiff contract in accordance with the Council's corporate procedures as administered by Capita.</p>
<p>Contribution to Corporate Priorities:</p>	<p>Health and Welfare: Enforcement in accordance with the Control of Horses Act 2015 will enable the Council to reduce the current health and safety risk associated with stray or unattended horses in public places.</p>
<p>Financial Implications:</p>	<p>The <u>Control of Horses Act 2015</u> states that '<i>a local authority in England may detain a horse which is in any public place in its area</i>'.</p> <p>The government did not provide any additional funding.</p> <p>A paper has been provided by a local Horse Bailiff company to identify and break down actual costs.</p> <p>The revenue costs of engaging equine bailiffs and caring for detained horses pending collection by their owner or disposal by way of sale, re-homing or euthanasia will be covered by the existing revenue budgets for holding and maintaining land and property. The cost will vary for each case depending on any care the animal may require,</p>

	<p>how long the horse is detained before collection or disposal and method of disposal through sale, re-homing or euthanasia.</p> <p>As a guide, a single horse could cost £4,000 including the additional costs of euthanasia and cremation. This is the worst case scenario. Transport costs are a major factor in this and the cost of each case will vary depending on the number of horses to be carried at a time.</p> <p>There are currently between 2 and 6 horses on MDC land at any one time. (This is a substantial decrease since research was carried out in the summer of 2015).</p> <p>Assuming the worst case of none of the horses being removed by their owner(s) within the 96 hour period given (not including weekends or Bank Holidays) the detention and care of the horses for a week followed by euthanasia would cost in the order of between £8,000 and £24,000. It is anticipated that, once the message gets out that MDC will take action to remove unauthorised horses, the costs of policy enforcement should reduce.</p> <p>NB: It is worth noting that equine bailiffs have commented that in the main, horses are removed within the notice period.</p> <p><u>Staffing and other Resource Implications</u></p> <p>The legislation will be carried out by the Enforcement Officers within Neighbourhood Services once adequate training is received.</p> <p>Equine bailiffs will be engaged through a contract to undertake the specialised detention and care of horses.</p> <p>Avon and Somerset Police will be notified, as required by the legislation, when horses are proposed to be detained.</p>
<p>Legal Implications:</p>	<p>The <u>Control of Horses Act 2015</u> does not instruct local authorities to do anything.</p> <p>There is a financial risk to the Council that if a horse that it is aware of ‘escapes’ for example onto nearby roads where there is serious risk of harm to both to the animal and to other road users.</p> <p>If a fatality is caused and if negligence is proved, the council could be liable for compensation in order of several thousand pounds.</p> <p>If a serious injury is caused i.e. life changing injuries such as paralysis, and negligence is proved, the council could be liable for a multi-million pound compensation claim.¹</p> <p>The proposed adoption of the legislation complies with the Animals Act 1971 as amended by the Control of Horses Act 2015.</p>

¹ Cumbria County Council are currently looking at a £3+ million settlement for a young person paralysed for life following a collision with a horse in the road. Information provided during a Westminster seminar (Tackling Fly-grazing) held on 10th September 2015.

	<p>When operating the legislation it is extremely important to ensure that the strict time limits and notice requirements are followed. The service will have an operating Procedural Guide. This guide will need to be the subject of proper legal scrutiny to ensure that the Council is not exposed to risks.</p>
<p>Crime and Disorder Implications:</p>	<p>Local residents and the community in general are frustrated with no perceived action being taken by the Council to remove the unauthorised horses. Some have suggested that vigilante action could be considered – but they are fearful of repercussions from the local horse owners, so any Crime and Disorder is unlikely.</p> <p>The horse owners themselves may react negatively to their horses being seized.</p> <p>A ‘Protocol for Management of Horses in Mendip District’ has been prepared. The protocol recommends that police officers attend for every incident of horse removal.</p> <p>The protocol includes a robust Risk Assessment.</p>
<p>Equalities Implications:</p>	<p>An Equalities Impact Assessment has been produced.</p> <p>It is recognised that a disproportionate number of horses grazing on MDC land without permission may be owned by the Gypsy and Traveller community. Taking action to remove the horses is likely to have a disproportionate impact on horse owners within this community.</p> <p>For this reason, engagement with the traveller community has already taken place. A meeting was held at the council offices with representatives from the Gypsy Council and representatives from the Romany Traveller community.</p> <p>Their expectations were managed and their fears refuted.</p> <p>Examples were given of alleged bad practice where upon bailiffs have removed Romany horses whilst the families were away from their caravans.</p> <p>The Mendip protocol clearly states that the arrival of Romany Travellers with horses will only be dealt with under the provisions of the Criminal Justice and Public Order Act 1994 rather than the Control of Horses Act 2015.</p> <p>In addition there is an educational soft-approach consultation.</p> <p>A letter, setting out the proposed policy, had been produced and distributed to the known residents on the Pines Residential Site at Frome together with identified families within the Frome area.</p>

	<p>There is in addition, in order to prevent any accusations regarding literacy, the offer of personal visits to the sites and identified homes to ensure that the message was delivered properly.²</p> <p>At the time of print no-one has come forward for additional information or a personal briefing.</p>
<p>Risk Assessment and Adverse Impact on Corporate Actions:</p>	<p>The Protocol for Management of Horses in Mendip District has been produced with a robust Risk Assessment covering all aspects of this initiative.</p> <p>Even the basics of approaching a horse have been covered.³</p> <p><u>Positive Impact:</u></p> <ul style="list-style-type: none"> • MDC receive due consideration for the positive enforcement of current legislation • MDC see a reduction in complaints of fly-grazing due to proactive action <p><u>Negative Impact:</u></p> <ul style="list-style-type: none"> • Failure to adopt the legislation will render MDC open to numerous complaints due to inaction • Failure to adopt the legislation could leave MDC liable to huge compensation claims • Adopting the legislation could cost MDC many thousands of pounds in seizing horses without the problem being reduced or solved • Adopting the legislation could draw adverse publicity from animal lovers if the disposal option for the seized horses is euthanasia.
<p>Scrutiny Recommendation:</p>	<p>Scrutiny Board on 27th February 2017 voted in favour of the recommendations by majority vote; 4 in favour, 3 against.</p>

² Consultation with Tom Rutland, Corporate Equality Manager, Somerset County Council.

³ Horse World have volunteered their services to train relevant officers to approach horses in the correct manner in order to check them for microchips etc.

INTRODUCTION

What is it?

Fly-grazing is the practice of placing a horse or horses on someone else's land to graze without the permission of the landowner. Landowners have a duty of care towards any animal on their property and fly-grazing puts the responsibility to feed and care for the animal on someone other than the owner.

A horse is abandoned where it is deliberately left somewhere by an owner either permanently or for a sufficient amount of time to risk unnecessary suffering.

Oversupply and reduced demand mean that unscrupulous and unregistered breeders who cannot afford to feed and care for their horses are leaving them on farmland and other private property. This means that they retain ownership but not a duty of care.

Horses are also fly-grazed on public green spaces such as grass verges, sports pitches and recreation grounds. This not only restricts access for the public but the horses may cause damage to fences and turf which can be costly for the Local Authority to repair or replace.

Often the response from many owners that have been instructed to move their horses, should they be found, is that "they are not doing any harm" though there are a number of problems associated with fly-grazing.

Welfare of the Horse

The horses are usually, but not always tethered to prevent roaming. Injuries can be caused by the tether collar or head collar being too tight and cutting into the horses' head or neck. Horses can be injured or killed if they become entangled in the tether rope or the rope becomes wrapped around obstacles such as trees or lampposts. Although tethering is not illegal, any tethered animal should be checked on a regular basis.

Horses that are tethered cannot run away from dogs or any person who may wish to do the horse harm, there are also concerns regarding access to water (which may have been left in a bucket but has been kicked over), hay / grass or shelter from adverse weather conditions. The horse may well be nervous or frightened and caution should be taken if it becomes necessary to approach the animal.

When tethered on a grass verge next to a busy road or in a residential area with high volumes of traffic there is a risk of the horse escaping from its tether and straying onto the road, this could lead to accidents with potentially fatal consequences for both the horse and the occupants of any vehicle that may hit it.

When tethered near to residential areas there can be problems with waste which will smell and attract flies. Even when the owner of the horse is located, many people are reluctant to approach them because of possible threatening and abusive behaviour.

Members of the public should be advised to report any animal found on a highway to the police using the 101 number. In addition if they are subject to threats they should ring 101 for non-emergency incidents or 999 if the situation is ongoing.

The Control of Horses Act 2015

This law gives private landowners the same powers as Local Authorities to take quick action to remove abandoned and fly grazed horses. Under the above Act, landowners can take possession of abandoned horses after a 4 day notification period, whereupon

they can then be re-homed privately or to a charity, sold or humanely destroyed. If sale is the preferred option the horse must be micro-chipped and have a valid passport before the transaction takes place.

If there is no sign of an owner an abandonment notice must be erected. The notice should be displayed prominently for a minimum of 4 days at the location the horse was found, the 4 day period will be calculated from midnight on the day of posting the notice. A responsible owner should attend to their horse at least once a day, so putting a notice in place for 4 days should be adequate for them to respond.

The notice should include a contact number and / or address, a very short description of the horse and the intention to remove the horse if no owner comes forward.

Upon detention of any suspected abandoned horses the local police must be notified within 24 hours. If the owner is known, they must be notified.

If an Owner Comes Forward

If someone claims to be the owner, it is advisable to ask to see the horses' passport which they should, by law, have in their possession, though the reality is that many fly-grazed horses may not. Though a passport is not legal proof of ownership it should give some assurance that the person is the owner.

Alternatively photographs can be requested or an accurate description of the horse can be requested, it is at the authority's discretion as to what proof will be accepted.

The horse will not be released until the owner has reimbursed the council for any damage caused by the horse to any property and any reasonable expenses incurred in keeping the horse and ascertaining who owns it. If the owner refuses to pay the reasonable expenses within the 4 day defined period a further decision can be made either to keep the horse, re-home, sell or euthanase it. Once the expenses have been claimed any money remaining will go to the owner.

If an Owner Does Not Come Forward

If the problem remains after the 4 day (96 hour – not including weekends or Bank Holidays) defined period, ownership passes to the person detaining the horse, who may then, either keep the horse, re-home, sell or euthanase it. Whichever course of action is decided, records of money spent must be kept i.e. bills for veterinary treatment, vaccinations, worming etc. If an owner does eventually come forward the council is entitled to ask for compensation to cover all its expenses, though these must be reasonable.

If a decision is made to keep the horse it will need to be checked whether it has a microchip implanted and then a valid passport needs to be obtained as a vet will ask to see this if the horse ever needs veterinary treatment.

If selling the horse privately it may be advisable to obtain a professional valuation. From the sale the council would be entitled to deduct any reasonable costs and damages. It should be borne in mind that any money left over is recoverable by the previous owner should they come forward after the sale. The horse will need to be micro-chipped and hold a valid passport before sale.

RECOMMENDATION

For Cabinet to authorise the Group Manager for Neighbourhood Services to enforce and administer the Control of Horses Act 2015.

To grant the Group Manager for Neighbourhood Services the power to authorise such officers within Neighbourhood Services Group and Community Health Group to enforce the Control of Horses Act 2015

NB: Amendments will be made by the Monitoring Officer to the Councils' Constitution and reported to the Council in due course.

NEXT STEPS

Should Cabinet Board agree to the adoption of the Control of Horses Act 2015 – next steps include the following:

- Authorisation be given to Enforcement Officers
- Train the relevant Enforcement Officers
- Purchase an equine 'micro-chip reader'
- Tender for the Horse Bailiff work/contract
- Publicise the decision to enforce the legislation through the media and other local channels.

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