

Cabinet**4 December 2012**

Report of the Cabinet Member – Crime & Community Safety

Tethered Horses – Proposed Policy Framework**Summary**

1. This report aims to raise awareness of the problems associated with horses being deliberately tethered on land without the landowner's permission, often on council land and in particular public highways and to propose the development of a joint protocol which sets out how these issues can be managed by the Council and partner organisations within the legal framework and resources available.

Background

2. Over recent months there has been an increasing number of complaints and incidents relating to horses tethered on council land, in particular highways and footpaths. York is not alone in this and similar situations have also been found across the country, particularly in West and South Yorkshire areas, the West Midlands and County Durham. The practice of leaving horses to graze on land without permission of the landowner is becoming increasingly problematic to local authorities and private landowners. This is commonly (although not exclusively) associated with the Gypsy and Traveller Community, which have a long tradition of horse ownership and trading.
3. Anecdotal evidence suggests there has been an increase in the number of horses tethered on the highways, this may be as a result of a reduction of land previously used for grazing due to development. The numbers may also have been exacerbated by greater regulation introduced with the Horse Passport Regulations in 2009.
4. Horse-related problems can generally be divided into the following categories:
 - Loose or stray horses which pose a risk to danger to the public or highway users.
 - Unlawful grazing on public or private land (fly-grazing).
 - Welfare concerns.

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- Nuisance or damage caused by horses on private land.
5. These concerns may arise individually, but often they are in combination and require a multi-agency approach to deal with them effectively. The joint protocol will seek to provide a framework for effective communication and partnership working to ensure a joined-up approach to both preventing problems arising in the first instance and being able to respond to reported incidents as and when they arise. Not all of the above problems are always an issue, however any protocol should cover all the issues to prevent action in one category simply moving the problem to another. For any protocol to be effective it has to be supported by all key stakeholders and be clear about what it is trying to achieve. It also has to be reasonable and proportionate.
 6. Horses have for many years been tethered on 'Common Land' and could, in some instances, be considered part of the cultural heritage of an area. In some cases the legal title of land may specifically mention grazing of livestock. However, where a horse is tethered in such a way that it is cruel to the horse or as a result of where it is tethered it creates a danger, this can not be tolerated.

The Legislative Framework

7. There are a number of powers available to deal with horse related issues. The two most applicable legal powers available for dealing with loose or straying horses are:
 - The Animals Act 1971 (Section 7) - This Act allows the owner or occupier of land to detain horses (livestock) which stray onto their land and to claim expenses for damage done by the livestock to the land and the costs of keeping the livestock until such time as the horses are restored to the owner, or sold at a market or auction (after detaining the horses for no less than 14 days). The land occupier becomes responsible for the reasonable care of the horses while being detained. Although horses may have been put on land deliberately rather than "straying" onto it, this is the principle tool used for removing horse which are on public or private land without permission.
 - The Highways Act 1980 (Section 155) - This Act makes it an offence for horses to stray or lay on, or at the side of a highway. This does not apply to highways which cross common land, waste or unenclosed ground. The Police have powers to remove horses straying on the highway and either to return them to the horse owner or to remove them. A person found guilty of an offence can be is liable for paying the expenses

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incurred in removing and detaining the horses. This is the principal tool used to remove horses straying on a highway.

8. There are a number other legal powers which might also be appropriate for dealing with horse related issues:
 - The Animal Welfare Act 2006 - This Act creates an offence if a person with responsibility for an animal causes it suffering or fails to ensure its welfare. Allowing a horse to stray and potentially suffering harm and failing to secure adequate welfare, is likely to an offence under the Act. The key difficulty here is, if the horse isn't chipped or passported is identifying who the owner of the horse is so that enforcement action can be taken. The power is one of prosecution and potential additional powers to deprive or disqualify a convicted person from keeping animals. These powers are therefore useful as a deterrent and for potential longer term solutions for persistent offenders, but they do not offer relief to urgent situations. Although the local authority has powers to enforce the Animal Welfare Act, it is common practice for this to be carried out by the RSPCA.

One common query in relation to horse welfare is the practice of tethering horses. On the one hand this practice prevents a horse from straying and potentially causing harm to itself or others, but on the other hand a tether does restrict the freedom of the horse and poorly designed or fitted tethers may lead to injury or harm. The British Horse Federation Code of Practice recommends that tethers are not used as a long-term method of managing an animal, but may be useful as a short-term means of control.

- The Town & Police Clauses Act 1847 (Sections 21 – 29) - A similar power to that contained in the Highways Act, which provides powers to the Police to seize and impound horses that are “found at large in any street” and provides the power to recover reasonable expenses incurred in keeping the horses.
- The Environmental Protection Act 1990 – Part III - The provisions in this Act provide powers to the local authority to investigate and deal with statutory nuisance, which includes “any animal kept in such a place or manner as to be prejudicial to health or a nuisance”. The powers are primarily used by Environmental Health Officers and allow the service of legal notice (an Abatement Notice) on the person responsible for the

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nuisance requiring it to be abated, with the prospect of prosecution for failing to comply. This provision might be best used if horses, by virtue of the way they are being kept, cause nuisance to local residents.

- Horse Passport Regulations 2009 - These regulations require horses to have an identification document (passport) and micro-chip which are issued by and registered with an authorised Passport Issuing Organisation. The only exception to this is if the horse already had a passport prior to the regulations coming into force in 2009. Foals must be passported and micro-chipped by the 31st of December in the year of birth or within six months of being born, whichever is the later. The passport system aims to prevent horse meat, which may have been treated with veterinary medicine, from entering the human food chain, and helps prevent the sale of stolen horses. Local Authority inspectors have powers to require passport information and can prosecute people who do not comply. Although, in theory, this should be a useful tool for identifying horses that have strayed, or left in fields it is often the case that these horses are not micro-chipped and so identifying the owner is extremely difficult. One consequence of the legislation is that if a horse is seized and pounded it cannot be subsequently sold unless it has a passport and is micro-chipped, which places an additional cost onto the Council.

Proposed Interventions

9. Provision of land for grazing - The Council owns a number of areas of land across the authority, which if it chose to, could be licensed out to individuals allowing them to use the land, for example to graze horses. The Council has discretion whether or not to issue a licence, to set appropriate charges and to apply any conditions on the use of the land. Licenses usually last for a set period. In addition to the provision of existing land, consideration should be given to the purchase land, subject to availability of finance, where horses can be grazed.
10. As part of the early discussions, potential was raised with the National Farmers Union with regards to the options for local land owners to provide land for grazing. A key element of the discussion was the separation of the management and ownership of the land and the ability for any land to be returned to the land owner if requested.
11. It will be critical that core standards are put in place which have to be adhered to. It is suggested that before any licence is issued

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checks should be made to ensure the applicant is not disqualified from keeping animals, or has any convictions for animal cruelty or welfare offences. As a minimum requirement, it is proposed that the following conditions should be applied to any licence:

- All horses must have a passport and be micro-chipped;
- The requirements of DEFRA's Code of Practice for the Welfare of Horses, Ponies, Donkeys and their Hybrids must be followed;
- Horses should be kept so as not to cause a nuisance or danger to others;
- The lessee should have adequate public liability insurance and indemnify the Council against any loss or damage resulting from keeping the horse on the land;
- Any waste arising from the keeping of horses must be properly disposed of;
- Any damage to the land, including fencing etc, must be repaired at the lessee's cost;
- The horse owner, or their representative, must provide contact details in case of an emergency (full-time 24hr contact, including cover when on holiday etc).

12. Work with horse owners to reduce the overall numbers – There is a long tradition of horse ownership within the travelling community, which is embedded within the cultural of the community. The majority are responsible owners who legitimately graze their horses and ensure they are well cared for. However, there are also less responsible horse owners who tether their horses on land without permission from the land-owner in an attempt to avoid grazing charges or food costs.
13. Currently, where horses are identified Support Workers liaise with travellers for them to be moved, however, this is often only moving the problem from place to place. There are a number of potential options that could be considered, a key part of the Support Workers discussion with travellers who have illegally tethered horses should be not only the encouragement of utilising the grazing land made available as set out above, but where it is felt to be the most appropriate course of action, to work with the Animal Health team to, where possible, re-home the horses as part of a pre arranged re-homing agreement.
14. Horse welfare concerns – Where a report is received which raises concerns with regards to the welfare of a horse, be it tethered or not, this should be verified by the animal health team, where these

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concerns are confirmed, they will then be referred to the RSCPA for investigation and any subsequent action.

15. Seizure of illegally tethered horses – There are a number of circumstances where the council may feel that the most appropriate course of action is to seizure of the horse. The legal framework which allows action in these cases is as set out earlier in this report.
16. One approach that the council could take is a zero tolerance approach and the seizure of all horses tethered and grazing unlawfully on council land. There is no legal requirement on the council to provide grazing land. However, it is felt that a zero tolerance approach could be counter productive, and unnecessarily expensive to the council tax payer.
17. It is felt that a more balanced approach would be appropriate where the provision of grazing land and an approach to re-homing horses is the most appropriate approach to take. However it is acknowledged that there may be occasions where it is felt that the location of a tethered horse constitutes a danger to either the horse itself or others (including road users). This should be assessed via a risk assessment. Where it is felt that there is a health and safety risk to either the horse or others, the relevant powers set out previously should be used and the horse seized.
18. It is clear that where a decision is made to seize a horse, there will be costs associated which will need to be met by the council, at least initially. Discussions with other agencies that have such policies in place identify that the cost are in the region of £1000+ per horse. The legislation allows for the council to recover its costs from the owner of the horse before it is returned, however, it should be acknowledged that in a large number of instances where horses are seized, it will be unlikely that we will be able to identify the owner as often the horses are not chipped or passported. In some instances owners may come forward, where this is the case, a condition of return should be that the horses are chipped and passported before return, the cost, along with all the costs associated with the seizure and subsequent stabling of the horse, to be paid before the horse is returned.
19. Where the owner is not traced or doesn't come forward, the horse should be sold to recover as much of the costs as possible, however it should be noted that in most cases it is very unlikely that the majority of the costs will be recovered. Budget provision will therefore need to be considered as part of the 2013/14 budget discussions to enable such an approach to be taken.

Consultation

20. In developing these proposals consultation has taken place with the Police, NYCC and the NFU. Further consultation will be undertaken with land owners, partner agencies and the travelling community as part of the development of the detailed joint protocol.

Options

21. Option 1 – To agree the proposals set out in the paper:

- That the council develop a joint protocol with the Police, RSPCA and landowners and travellers setting out responsibilities of all parties and detailing a course of action to be taken in the following circumstances:
 - Where a horse is tethered on a highway verge;
 - Where a horse is grazing illegally on CYC land;
 - Where a horse is grazing illegally on private land;
 - Where a horse is found loose on a public highway.
- The council consider its land assets to identify areas of land that it feels would be suitable for letting as grazing land.
- The council works with private land owners and the NFU the potential for land owners to provide land for grazing.
- The councils Animal Health Service work with the RSPCA and horse welfare charities to develop micro chipping and re-homing service.
- The council review its licence and tenancy agreements and insert a clause that prevents the tethering of horses on council land unless there is an agreement in place as part of the provision of land for grazing.
- The council enter into a procurement process to appoint a contractor to manage the seizure and, where necessary, the sale of any horses.

22. Option 2 – To agree some but not all of the proposals set out in option 1.

23. Option 3 - To not agree the proposals and retain the status quo.

Analysis

24. The majority of the analysis is set out within the body of the report, however:

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- Option 1 would enable the council to ensure that an appropriate course of action is taken to ensure the safety and welfare of tethered animals as well as ensuring that a balanced approach to the problem is taken thereby reducing the financial and reputational risk to the authority. In developing the joint protocol it will be important that there is full consultation with all stakeholders so that full buy in to the proposals and everyone understands the roles and responsibilities of their organisation.
- Option 2 would enable the council to meet its statutory responsibilities, but could result in challenge from individual sections of the community that the council were not doing all it could to address the issue.
- Option 3 would mean that the council would continue to take a reactive approach to the issue.

Council Plan

25. The proposals set out in the report support the Council Plan, in particular the themes, Build Strong Communities, Protect the Environment & Protect Vulnerable People.

Implications

26. The implications arising from this report are:
27. **Financial** – If the recommended option is agreed there are likely to be significant costs to the authority. The majority of these costs are related to the seizure and subsequent sale of the horses if they are not claimed. It is expected that once any policy is approved there will be a high level of reporting from the local communities. The proposal does not suggest a blanket approach where all grazing horses are removed. Where the owners do not remove the horses the council will incur the costs.
28. **Equalities** – The proposals will disproportionately impact upon the Gypsy & Traveller community, as part of the development of the joint protocol a full Equalities / Community of Interest impact assessment will be carried out.
29. **Legal** - The legal implications are set out in the body of the report.
30. **Crime & Disorder** – Adoption of the proposed recommendations will have a positive impact on crime & disorder and ensure that a clear protocol is in place which clearly sets out the responsibilities of all stakeholders,
31. **Information Technology** – There are no IT implications arising from this report.

32. **Property** – If the council decides to make land available for grazing, this will impact on the council asset portfolio.
33. **Other** - Adoption of the proposals will ensure that the council has a robust approach to the welfare of tethered horses.

Risk Management

34. The key risks associated with this report are financial & reputational. Adoption of the proposals will place a financial implication on the council and discussions with other local authorities who have gone down this line have shown that in the majority of cases the costs associated with seizure of horses is not recovered. However adoption of the proposals will have a positive reputational impact on the council, as we will be responding to clear concerns set out by the public, whilst ensuring a balanced approach to enforcement.

Recommendations

35. Cabinet is recommended to:

- Agree the proposals set out at Para 21 and agree that a joint protocol be established and brought back to the Cabinet Member for approval in February 2013.
- Consider the costs associated with the proposal as part of the 2013/14 budget setting process.

Reason: To ensure that the council has a robust, yet balanced approach to dealing with tethered horses.

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