

## OFFICER DECISION FORM

**DECISION TO BE TAKEN BY:** Director of Neighbourhood Services

**KEY DECISION NO**

**DIRECTORATE:** Neighbourhood Services

**WARDS AFFECTED: ALL**

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**SUBJECT: Friends of Birkenhead Kennels Contract Extension**

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### **1.0 DECISION:**

- 1.1 The Director of Neighbourhood Services has agreed to extend the contract with the Friends of Birkenhead Kennels (FOBK) for a period of 3 years from 1<sup>st</sup> April 2023.

### **2.0 REASONS FOR THE DECISION**

- 2.1 The contract with FOBK is due to expire on 31<sup>st</sup> March 2023 and therefore requires extension.

The main reasons behind this decision are: to assist financial planning, to secure ongoing savings, to fulfil a statutory duty and to maximise the quality of the service.

The arrangement will provide the confidence and ongoing surety for Wirral Council that it has a contractual arrangement with a partner who has an eight-year history of reliably delivering these statutory duties on behalf of the Council. The contract arrangement also offers value for money with a defined revenue budget set over the medium term which will also assist Wirral Council in its medium-term financial planning. Beyond its compliance with its statutory duties in respect of stray dogs, in continuing to contract FOBK to deliver this service it is committing to a partner who is dedicated to improving animal welfare and whose access to resources and a network of volunteers and supporters dedicated to animal welfare offers value beyond any commercial or in-house arrangement within the current budget constraints.

### **3.0 STATEMENT OF COMPLIANCE**

- 3.1 The recommendations are made further to legal advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been completed. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

### **4.0 DECLARATION OF INTEREST**

- 4.1 None.

**Signed:**

**Officer: NICOLA BUTTERWORTH**

**Title: DIRECTOR OF NEIGHBOURHOODS**

**Date: 17<sup>th</sup> JUNE 2022**

**A list of background papers on this issue is held with:**

Contact Officer: Christopher Smith

Date: 17<sup>th</sup> June 2022

**Date of Publication:**

**Date of Expiry of Call-In Period: N/A (only applicable to Key Decisions)**

17<sup>th</sup> June 2022

<b>Report Title:</b>	<b>Friends of Birkenhead Kennels Contract Extension</b>
<b>Report of:</b>	<b>Assistant Director Parks and Environment</b>

## REPORT SUMMARY

The Environmental Protection Act 1990 gives the Council sole responsibility for the collection and detention of stray dogs. Sections 149 and 150 of the Environmental Protection Act 1990 (EPA 1990) outline the Council's duties with regards to discharging this role which are prescriptive in detailing what the procedure should be for dealing with and processing stray dogs.

From 1 December 2014 these duties were delegated through a three-year contractual arrangement with a not-for-profit local charity called Friends of Birkenhead Kennels (FOBK). The contract permits extensions up to a maximum of 18 years. This contract was extended in 2018 and expires on 31<sup>st</sup> March 2023.

The contract with FOBK was identified as *part of the Council's Technical Functions Transformational Project which examined alternative service options*. This work identified a budget option which has enabled the Council to make direct savings of £40,000 per annum since the transfer took place. An estimated further saving of £20,000 has also been made per annum since the transfer as Wirral Council has not been liable for the uncontrollable overspends linked to the staffing operating costs at the Kennels.

The decision supports the following areas of the Wirral Plan:

**Inclusive economy** – the partnership provides continued employment and future opportunities to Wirral residents. The opportunity of volunteering also provides valuable experience and insight to those wishing to seek employment in animal welfare roles.

**Safe and pleasant communities** – the service and partnership ensures stray dogs are removed from the streets in a timely and safe manner in order to prevent injury to other dogs of members of the public. Stray dogs also have a detrimental effect on the environment e.g., fouling which can be avoided by a prompt and effective stray dog collection service.

**Active and healthy lives** – the partnership provides opportunities for the public to take part in regular dog walking, benefitting the health and wellbeing of both the animals and the volunteers themselves.

This matter covers all wards but is not a Key Decision.

## RECOMMENDATION

The Director of Neighbourhood Services is recommended to extend the contract with FOBK from 1<sup>st</sup> April 2023 for a period of 3 years.

## **SUPPORTING INFORMATION**

### **1.0 REASONS FOR RECOMMENDATION**

1.1 The Council has a statutory duty to provide a service for stray dogs within the Borough in accordance with the relevant legislation.

The partnership with FOBK is now well established and provides value for money and greater animal welfare provision.

### **2.0 OTHER OPTIONS CONSIDERED**

- 2.1 In reviewing these arrangements there were two alternative options to consider. The first option would be to bring this service back in-house. This option poses two main drawbacks these being a significant increase in costs and a reduction in the animal welfare standards for the stray dogs being housed at the kennels. Currently FOBK operate the kennels using three of the paid staff transferred on 1 December 2017 (2.5 FTE) and staff employed directly by FOBK (1.5FTE) but these numbers are supplemented by one full time volunteer who manages the kennels. At any one time there are also up to six part time volunteers who help create an enriched environment for the dogs and assist in every other aspect of running the service. To duplicate these staffing levels could cost an additional £80,000 to £100,000. In addition to this the Council would have to pick up a number of miscellaneous costs such as kennel repairs, veterinary fees, dog blankets and dog food which are largely donated by supporters of FOBK. Duplicating the service provided by FOBK would therefore be likely to be unaffordable and if taken back in-house animal welfare beyond the statutory minimum would likely be phased out or withdrawn.
- 2.2 The second option would be to put the contract out to competitive tender. On originally pursuing a formal partnership with FOBK an E120 form was (dated 24 April 2014) agreed that the direct appointment of the registered charity FOBK was exempt to Wirral Council's Contract Procedure Rules (CPRs) as a waiver of the rules was: in the interests of Wirral Council; was lawful; and provided value for money. The basis of this exemption was that following significant savings being achieved from this service since 2011-2012 and the fact that no viable shared service option was available to Wirral Council (following a complex procurement exercise across Merseyside) that the proposed budget option with FOBK met the exemption criteria under E120 of the contract procedure rules. This budget option was well supported by the public with a signed petition received by the Council to support FOBK with 6000 plus signatures. The E120 form and contract with FOBK also details the offer to extend the partnership arrangements if it works for both parties. Given that there is still no reasonably satisfactory alternative, that the transfer to FOBK is still in the interest of Wirral Council and that these arrangements are working for both parties it is not recommended that this contract be put out to tender as it is very unlikely to produce any viable alternative and will likely place an unnecessary strain on the current working relationship with FOBK.

### **3.0 BACKGROUND INFORMATION**

3.1 Since the partnership was formed in 2014, on every count FOBK have been dedicated to delivering their objectives and in ways never anticipated they have also improved the service considerably. The dogs are now better cared for with many enrichment activities, the structure of the housing has been improved and they have

introduced a popular and well publicised dog walking scheme. Through their network of contacts and social media FOBK have managed to raise large amounts media interest and finance for specialist treatments and kennel upgrades well beyond the abilities of Wirral Council could ever achieve.

#### **4.0 FINANCIAL IMPLICATIONS**

- 4.1 A continued annual budget of £97,100 would need to be provided. This ongoing budget requirement needs to be included in the medium-term financial planning for the Council to finance this arrangement.

#### **5.0 LEGAL IMPLICATIONS**

- 5.1 Under the Clean Neighbourhoods and Environment Act 2005 Wirral Council has the sole responsibility for the collection and detention of stray dogs. Sections 149 and 150 of the Environmental Protection Act 1990 (EPA 1990) outline the Council's duties with regards to discharging this role. Whilst the Council can delegate this responsibility, the delegation arrangements must ensure full compliance with these statutory requirements. The statutory duties include providing an acceptable out of hours reception service for stray dogs, ensuring compliance with the Animal Welfare Act 2006. As well as feeding and housing the animals that come into its care, the statutory duties under this act also include providing and meeting the costs for any veterinary care that these animals require. Under this legislation any stray dog brought into the care of the local authority must be kept for a statutory period of at least seven days, unless recommended to be euthanized on welfare grounds by a veterinary surgeon. During this time the local authority or its delegated agent is legally bound to meet all the aforementioned welfare needs of the animals in its care. After this period of time the dog becomes the property of the local authority and can be re-homed or euthanized. These statutory duties place a significant legal responsibility on the council (or through its delegated appointee) to look after animals that fall under its care. Whilst the local authority does have the legal powers to euthanize dogs that come in to its care after the statutory period of seven days, there is strong anecdotal evidence within the Wirral animal network that there would be extreme opposition to policy considerations that moved in this direction. Currently FOBK strongly oppose euthanasia and will only euthanize a dog in their care where it is in the interests of the dogs welfare, for example where the animal is suffering.
- 5.2 There is no legal option to stop delivering a stray dog service. There are also contractual provisions linked to the TUPE arrangements for Wirral Council staff who transferred to FOBK and who have Admitted Status to the Merseyside Pension Fund. Whilst all ongoing pension contribution costs for TUPE'd ex-Council staff are paid by FOBK, Wirral Council is the under-writer for these arrangements.

#### **6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS**

- 6.1 There would be no predicted additional staff implications over the period of the contract. However, in the short-term legal resources would be required to draft the extended contract and there would be a time requirement on the Senior Manager to oversee the contract extension process.

## **7.0 RELEVANT RISKS**

- 7.1 The Council must ensure it continues to comply with its statutory obligations in relation to stray dogs, as required by the relevant legislation mentioned in section 5.1.
- 7.2 If Wirral Council wishes to pursue other options outside of continuing with the current FOBK arrangements, then business continuity plans should be urgently drawn with supporting budget and resources to ensure continuing delivery of its statutory duties.

## **8.0 ENGAGEMENT/CONSULTATION**

- 8.1 No updated consultation has been undertaken in respect of the proposal to extend this contract. However, as part of the public consultation process undertaken in 2013-2014 there was significant support for FOBK and a petition was received by the Council which had over 6000 signatures. There is no evidence anecdotal or otherwise to indicate that this support would have reduced. FOBK is a well-known and well liked Wirral dog charity and enjoys significant numbers of supporters on its social media accounts with 22,300 followers on its Facebook page and 12,335 on its 'Dogs Needing Homes' page.

## **9.0 EQUALITY IMPLICATIONS**

- 9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment is a tool to help council services identify steps they can take to ensure equality for anyone who might be affected by a particular policy, decision or activity.

No equality implications are identified.

## **10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS**

- 10.1 There are no implications identified.

## **11.0 COMMUNITY WEALTH IMPLICATIONS**

- 11.1 The FOBK contract and arrangements support local employment for Wirral residents. The arrangement also greatly supports local community development and cohesion with a vast number of members of the public coming together and volunteering their time to contribute to the provision of high welfare standards for stray dogs on the Wirral. This includes for example regular dog walking and fund raising.

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## **APPENDICES**

None.

## **BACKGROUND PAPERS**

**Extending contractual arrangements with Friends of Birkenhead Kennels to deliver Wirral Council's stray dog service 5<sup>th</sup> February 2018**

**Formal briefing to portfolio holder cabinet member 5<sup>th</sup> February 2018**

**SUBJECT HISTORY (last 3 years)**

<b>Council Meeting</b>	<b>Date</b>