

EAST AYRSHIRE COUNCIL**COUNCIL MEETING - 26 JUNE 2008****PROPOSED POLICY ON LETTING OF COUNCIL OWNED SITES****Report by Head of Legal, Procurement & Regulatory Services****1. PURPOSE OF REPORT**

- 1.1** This report invites Council to consider the adoption of policy concerning the letting of council-owned sites to circuses or similar types of organisations which travel with and utilise wild and exotic animals in their operation.

2. BACKGROUND

- 2.1** The Council has an existing policy approved by the Community Services Committee on 16 October 1996 prohibiting "animal circuses on Council property where the application had been made by a circus operator who has a conviction for ill treatment of animals and has failed to satisfy a Hearing why such a prohibition should not be made."
- 2.2** Bobby Roberts "Super Circus" was granted an Entertainment Licence at a Special Local Government Licensing Panel on 16 July 2007 (hereinafter referred to as "the Panel") for six days. Bobby Roberts "Super Circus" travelled with a number of animals including an elderly elephant called Anne.
- 2.3** The circus went on for a period of 6 days in July 2007. There were two daily performances over said period. There were 2,937 paying customers and 392 complimentary tickets issued. The Council received no letters or comments from members of the public regarding cruelty to animals after the performances. In the time that animal circuses have been held within the Council's jurisdiction, there have been no complaints from members of the public regarding cruelty to animals within the circuses. A letter was received from Advocates for Animals (dated 6 August – Appendix 1) after the performances raising their concerns that Anne, the elephant could be viewed by members of the public within the circus "zoo".
- 2.4** Prior to the matter being considered by the Panel, the application had resulted in letters from members of the public within East Ayrshire and West Central Scotland. Furthermore, correspondence was received from the Captive Animals' Protection Society (CAPS) (Appendix 2) and Advocates for Animals (AA) (Appendix 3).
- 2.5** Members of the public, CAPS and AA's attention centred on the use of animals in circuses. Central to these concerns was the use of the elderly elephant, Anne. It was suggested by members of the public, CAPS and AA that the elephant was elderly, suffered from arthritis, was unsuitably

maintained in cramped conditions and lacked the social interactions that elephants enjoy in their natural habitat.

- 2.6** The second concern of members of the public, CAPS and AA's centred on the issue of public safety. It was alleged that Anne had managed to escape from a venue in South Ayrshire (Ayr in 2003). Furthermore, it was alleged that an elderly lady had been struck by an elephant and this was due to the lack of supervision of the elephant by the circus. Again this incident is alleged to have taken place in 2003.

3. DISCUSSION

- 3.1** It is suggested by pro-animal groups that it is a by-product of travelling circuses that animals are maintained in accommodation which is unsuitable to their health and welfare. AA in particular argue that the circuses' regime contravenes section 24 of the Animal Health and Welfare Act 2006 whereby it is an offence if a person does not take such steps as are reasonable in the circumstances to ensure the needs of an animal for which a person is responsible are met to the extent required by good practice. These needs include: a suitable environment; the ability to exhibit normal behaviour patterns; to be housed with (or apart from) other animals; and to be protected from suffering, injury and disease. This Act does not in itself prevent circuses which utilise animals.
- 3.2** It is the view of the Association of Circus Proprietors of Great Britain, attached (Appendix 4), that there is no scientific evidence which supports the assertion of a health risk to the animals performing in general. With respect to the case of the elephant owned by the Bobby Roberts Circus, it was suggested on their behalf that Anne is well cared for; that journeys are as short as possible and further the elephant is a family pet who could not survive out with the setting of the circus.
- 3.3** The use of licensing laws to prohibit circuses travelling with wild and exotic animals is not considered to be legally competent. The basis for this view is that the Council would be utilising the licensing legislation for a purpose that it was not intended for and could result in a subsequent legal challenge by interested parties. The Civic Government (Scotland) Act 1982 (hereinafter referred to as "the Act") sets out the licensing regime including public entertainment licences. It should also be highlighted that attempts to utilise licensing law to regulate animal circuses have been previously unsuccessful. This position has been tested by the Scottish Courts. In the case of *Gerry Cottle's Circus v City of Edinburgh DC*, in 1989, the City of Edinburgh Council was judicially reviewed. The City of Edinburgh Council had refused a public entertainment licence application based on the Council's policy that performing animals in circuses was "wrong". This position was successfully challenged by the circus company on a number of grounds. One of those successful grounds was that the attainment of the City of Edinburgh Council's policy was ulterior to the purpose of the Act.

3.4 In essence, the Council acting reasonably could prohibit the leasing of Council controlled land to circuses travelling with wild and exotic animals. In deciding on a policy decision of any type, including this the Council require to consider the issue of Wednesbury reasonableness. Any decision must be based on supportable and rational grounds if judicially challenged in the Courts.

3.5 There is no universal definition of wild and exotic animals. However, drawing from all relevant legislation (particularly the Dangerous Wild Animals Act 1976) and other appropriate sources of information, a list of types of animals which might reasonably be considered to be wild and/or exotic is set out in Appendix 5. Of these, those which are understood to still be used within circuses with the British Isles include:- elephants, zebras, tigers, llamas, lions and snakes.

4. LEGAL IMPLICATIONS/FINANCIAL IMPLICATIONS

4.1 It is understood that in the financial year 2007/2008 the Council received the sum of £3,200.00 from one let to a circus. A revenue stream from any travelling circuses travelling with wild and exotic animals will be lost in the event of members supporting the recommendation.

5. RECOMMENDATION

5.1 It is recommended that Council:-

(i) consider adopting a policy of refusing to let Council-owned sites to travelling circuses or similar enterprises which utilise or travel with wild and/or exotic animals including those specified in Appendix 5;

and

(ii) otherwise to note the contents of the Report.

David Mitchell
Head of Legal, Procurement & Regulatory Services
18 June, 2008

LIST OF BACKGROUND PAPERS

Appendix 1

Letter from Advocates for Animals pages 1 – 3 dated 6th August, 2007.

Appendix 2

Letter from The Captive Animals' Protection Society pages 1-3 dated 5th July, 2007.

Appendix 3

Letter from Advocates for Animals pages 1 – 3 dated 28th June, 2007

Appendix 4

Letter from Circus Association of Great Britain, pages 1-2, dated 12th July 2007.

Appendix 5

Giraffe

Llama, Alpaca, Camel, Yak

Mink

Ostrich, Emu, Rhea and Cassowary

Reindeer

Seal and Sealion

Elephant

Apes – including Monkeys, Langur, Macaque, Guenon, Patas, Managbey, Baboon, mandrill, Gibbon, Orang Utan, Gorilla and Chimpanzee

Zebra

Wild dogs including Wolf, Jackal, fennec and fox

Bears

Venomous Reptiles.

Wild cats including Lynx, Caracal, Serval, Bobcat, Cheetah, Lion, Tiger, Leopard, Panther, Jaguar, Cougar and Ocelot except domestic cat

Alligator, Crocodile, Gharial and Caiman

Implementation Officer: Richard Crawford, Solicitor

APPENDIX 1



ADVOCATES FOR
ANIMALS
Giving voice, taking action

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William Stafford
Executive Director of Neighbourhood Services
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KA3 7BU

East Ayrshire Council
Department of Neighbourhood Services

6 August 2007

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Passed to For Action
For Info File

Dear Mr Stafford

EAST AYRSHIRE COUNCIL POLICY ON ANIMAL CIRCUSES

I write following the visit to Kilmarnock of Bobby Roberts Circus from 17 – 22 July this year

Advocates for Animals was one of the parties objecting to the application by the circus for a public entertainment licence, and I attended the licensing hearing called to consider that application.

We understood that the council was limited as to the factors it could consider. We welcomed the panel's decision to prohibit use of the elephant, Anne, in that it would guarantee public safety and might as a consequence protect this aged animal from unnecessary exploitation during her stay in Kilmarnock.

It was therefore extremely disappointing when members of Advocates for Animals attending a performance heard the audience invited to pay to see the animals in the zoo, and informed that "... you can see Anne the elephant, the only elephant in Great Britain today, so come along and see her." We reported our concerns to licensing officials but were told that there was little action that could be taken, given that the circus would shortly move to a new venue.

This was an understandable response, but the outcome was that the circus was able to contravene the terms of the licence with impunity, and continued to earn money from the use of the elephant despite the condition expressly made by the panel.

You will be aware that the Scottish Executive has proposed to legislate later this year with a view to prohibiting the use of some wild animals in circuses. Advocates for Animals believes that the use of all animals in circuses

compromises the welfare of the animals involved. In our view, the circus regime already contravenes the Animal Health and Welfare (Scotland) Act 2006.

Section 24(1) of the Act states that a person commits an offence if the person does not take such steps as are reasonable in the circumstances to ensure that the needs of an animal for which the person is responsible are met to the extent required by good practice. These needs include: a suitable environment; the ability to exhibit normal behaviour patterns; to be housed with (or apart from) other animals; and to be protected from suffering, injury and disease.

It is impossible for a travelling circus to comply with these requirements. Indeed there is now significant evidence to suggest that the distress and suffering of animals is inherent in travelling circuses.

Prior to the visit, we raised the possibility of a specialist veterinary inspection of the elephant. I understand that such an inspection was considered too expensive. Clearly arranging a specialist inspection at short notice, and for a visit of short duration, is disproportionately expensive for a single local authority. However, when this pattern is repeated from town to town, a circus has no incentive to improve its practices. We requested input from the Scottish Executive veterinary policy advisor, and initially hoped that an Animal Health vet would be able to assess whether or not the elephant was fit for transport. However, although this was done in 2005, the agency was not willing to be involved again as they considered it a local authority responsibility. Also in 2005, COSLA wrote to councils suggesting that inspection could be considered on a shared basis among councils. In this case, the circus was travelling on to Dumfries and Galloway where the council was faced with similar, although not identical, issues to consider.

Advocates for Animals would suggest that much of this inconvenience, expense and concern about animal welfare could be avoided if East Ayrshire Council decided, as a policy, to stop leasing council land to circuses using animals. A number of councils already have such a policy. For private land, standard conditions could be attached to public entertainment licences to ensure that a circus met modern animal welfare standards or was deterred from visiting.

The proposed secondary legislation regarding animals in circuses may only cover wild animals. I would suggest that the council should make its own policy reflecting the views of local constituents and elected members, and that this would be an excellent time for East Ayrshire to consider a "no animal circuses" policy.

In closing, may I express my appreciation of the open and accessible way with which council officials treated our representations regarding the licence, and the very careful consideration given by councillors to the specific issues raised.

I should be very grateful for your views on this matter.

Yours sincerely

Libby Anderson

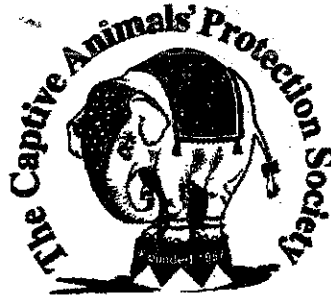
Libby Anderson
Political Director

Cc Cllr Jim Buchanan
George Scott

50th

ANNIVERSARY

1957 - 2007



Agenda 2
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- 9 JUL 2007

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Elizabeth Morton
East Ayrshire Council
Executive Director of Corporate Support
Civic Government Licensing
14 London Road
Kilmarnock
Ayrshire

5 July 2007

Dear Ms Morton

APPLICATION FOR PUBLIC ENTERTAINMENT LICENCE -- BOBBY ROBERTS CIRCUS

I note from the Kilmarnock Standard of 21 June 2007 that Bobby Roberts Circus has applied for a public entertainment licence to stage a circus in Kilmarnock between 17 and 22 July 2007.

The Captive Animals' Protection Society (CAPS) registers our objection to the application on several grounds.

1. Animal welfare

This circus is just one of eight in the UK to still use animals, including horses and dogs. It also has a camel who, during recent CAPS investigations of the circus, has not been used in performances but has only been seen inside the stabling tent. The circus is also the last to have an elephant, a 54-year-old Asian elephant named Anne.

Anne is elderly, does not have the company of other elephants (despite elephants being one of the most social species on Earth) and has arthritis. The circus tours the UK for around ten months each year, usually moving venue each week.

It is the view of CAPS, and vets and animal behaviourists we have consulted, that constant transportation and inadequate temporary housing can have adverse impacts on the welfare of animals. We are obviously particularly concerned for the welfare of an arthritic animal under these conditions.

Continued...

Patrons

Prof Marc Bekoff
Mike Hancock MP
Britta Jaschinski
Prof Randy Malamud
Dr Edgar Mann
Fiona Oakes
Brian Sewell
Angela Smith MP
Peter Tatchell

Scientific Advisors

Samantha Lindley
BVSc, MRCVS
Dr Roger Mugford
BSc, PhD
David Spratt
FLS(Lond), FIBMS,
BSc(Zool), MIHM

The very nature of a travelling circus leads CAPS, and our consultants, to believe that all of the needs of animals cannot be met under these conditions. As such, this could be a breach of the Animal Health and Welfare (Scotland) Act 2006 as well as legislation regarding the transportation of animals and whether they are 'fit to travel'.

CAPS, along with organisations such as Advocates for Animals and the RSPCA, believe that the use of all animals in circuses should be prohibited. We have lobbied for such a prohibition to be included under new animal welfare legislation both in Scotland and England and Wales. The massive decline in the use of animals in circuses over the past 15 years is a sign that the public generally prefer to see circuses without animals. While only 8 circuses now still have animals, around 30 tour very successfully with entirely human acts.

2. Public safety

The safety of visitors to animal circuses is an issue of great concern, particularly given the large number of accidents that happen worldwide, as well as incidents in the UK.

Anne, the elephant at Bobby Roberts Circus escaped while the circus was in South Ayrshire in December 2003. She was only caught when she stopped in someone's garden.

Just three months prior to this, a member of the public in North Wales was allegedly knocked down by the elephant while visiting the circus with her grandchildren.

I have enclosed two news articles regarding the above incidents (Annexes A and B).

We are concerned that the circus uses the elephant in close contact with the public. She is taken into the circus ring during the interval in each show and the public pay £4 to have their photo taken alongside her. The vast majority are young children and they stand next to, or touching, the elephant who is not contained behind safety barriers. On visits to the circus over the past two years in particular, CAPS investigators have noted that the elephant appears to have difficulty putting weight on her arthritic rear leg. This adds to our concern about the risk of allowing the elephant to have close contact with the public.

3. Environmental impact

Heavy vehicles, tents for performances and animal housing, staff and public walking around and the animals themselves will all create potential damage to the site that the circus intends to use. Attached are images of sites used previously by this circus, showing the damage that was left by the circus (Annex C). Also enclosed is a newspaper article showing damage left to council land in Rochdale and complaints that resulted (Annex D).

The Licensing Board should also consider what health risks remain from animal faeces and urine on the land. As the enclosed photos show, animal bedding / feed may remain on the site after the circus has left. We understand that the site the circus has applied to use is due to be used for a sports event the following day.

Continued ...

4. Public nuisance

Lorries, generators, staff, public, noise of the performance itself – these are all things which are likely to create a lot of noise and disturbance for local residents. It is therefore not surprising that visits by circuses close to residential properties result in complaints to councils, particularly in relation to evening performances and when circus vehicles are used late at night or the whole circus is setting up or pulling down at unsociable hours.

These are some of the many reasons why around 200 local authorities across the UK have already made the decision to refuse permission to allow animal circuses to use council-owned or managed land.

We request that the Licensing Board take our comments into account and refuse a licence for this circus.

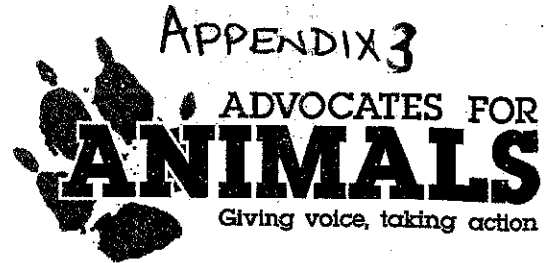
Yours sincerely



Craig Redmond
Campaigns Manager

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- 4 JUL 2007



East Ayrshire Council
per Elizabeth Morton
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28 June 2007

Dear Ms Morton

APPLICATION FOR PUBLIC ENTERTAINMENT LICENCE – BOBBY ROBERTS CIRCUS

I note from the Kilmarnock Standard of 21 June 2007 that Bobby Roberts Circus has applied for a public entertainment licence to stage a circus in Kilmarnock between the dates of 17 and 22 July 2007.

I wish to object to the application on several grounds.

1. Animal welfare

Bobby Roberts Circus features animals including performing horses and dogs. The circus also tours with a 54-year old elephant, Anne, who suffers from arthritis and should not, in our view, be subjected to arduous travel, inadequate temporary accommodation, and public display.

You may be aware that the Scottish Executive has proposed to legislate later this year with a view to prohibiting the use of some wild animals in circuses. Advocates for Animals believes that the use of all animals in circuses compromises the welfare of the animals involved, and that as a result the circus regime contravenes Section 24 of the Animal Health and Welfare (Scotland) Act 2006.

Section 24(1) of the Act states that a person commits an offence if the person does not take such steps as are reasonable in the circumstances to ensure that the needs of an animal for which the person is responsible are met to the extent required by good practice. These needs include: a suitable environment; the ability to exhibit normal behaviour patterns; to be housed with (or apart from) other animals; and to be protected from suffering, injury and disease.

In the view of Advocates for Animals, it is impossible for a travelling circus to comply with these requirements. Indeed there is now significant evidence to suggest that the distress and suffering of animals is inherent in travelling circuses.

While it may be difficult for a local authority animal health officer to satisfy himself/herself that the welfare of the animals is ensured to the extent required by the legislation, we hope that evidence of compliance with Section 24(1) will be sought by the council, if it should decide to grant a licence. We request also that officials satisfy themselves that the transport of all the animals complies fully with the Welfare of Animals (Transport) (Scotland) Regulations 2006 and Council Regulation (EC) No 1/2005 on the protection of animals during transport and related operations.

2. Public safety

In December 2003, when Bobby Roberts Circus visited South Ayrshire, Anne the elephant escaped from the circus and could not be recaptured until she stopped of her own accord. Council officials from South Ayrshire later made the following comments in their response to the proposals for the Animal Health and Welfare (Scotland) Bill:

"We recently had problems with an elephant which escaped from a circus and found that the solution to ensuring the animal stayed within the confines of the circus was okay in the short term but we are sure would result in stress for the animal in the long term."

Earlier in 2003 it was reported that a member of the public in North Wales had been knocked down by the elephant.

It cannot be guaranteed that an animal will not escape in future.

3. Environmental impact

In addition to the potential damage that may be caused by the installation of tents and vehicles, we would ask the licensing board to consider the impact of animal urine and faeces and the difficulty of cleaning this up. Environmental impact is particularly relevant in view of the fact that the Scott Ellis Athletics Track is to be used as a venue for the Council's Star:track Athletics programme for 5-18 year-olds, starting on 23 July - the day after the proposed circus visit.

4. Public nuisance

Local residents are likely to be disturbed by noise and the presence of crowds and vehicles.

Many local authorities have taken the positive decision to review their policy on the letting of council owned sites to circuses, and resolved to refuse permission for animal circuses to take place on their land.

I hope that you will take my objection into account and decide against granting a licence to this circus.

Yours sincerely

Libby Anderson

Libby Anderson
Political Director

FOUNDED IN 1932



All correspondence to the Secretary, P. O. Box 131, Blackburn, Lancashire, BB1 9GA
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Secretary: Malcolm Clay

12th July 2007

Ms. Elizabeth Aughton
Executive Director of Corporate Support
East Ayrshire Council

Dear Ms. Aughton,

**Bobby Roberts Circus
Application for Entertainment Licence at Kilmarnock**

The Bobby Roberts Circus is a long-standing member of this Association and complies with the Association's standards of animal welfare. I am aware that there are objections to the granting of the licence and I am grateful for the opportunity of being able to comment on behalf of The Bobby Roberts Circus.

I must first refer you to the case of Gerry Cottle's Circus Limited v The City of Edinburgh District Council, which I believe the Council solicitor Mr. David Mitchell has considered, and which was the judicial review of a decision by Edinburgh District Council to impose a condition on a Temporary Public Entertainment Licence that the performance could not include animals. The judgement went against the Council and the judge considered that such a condition was "ultra vires" an Act which basically concerns public safety. As the judge commented at the hearing "Is Edinburgh Council claiming that it could ban jugglers from a circus performance as the principle is the same?" The judge also pointed out that a Council, like East Ayrshire Council, which is a licensing authority under the Performing Animals (Regulation) Act 1925 which licenses animal trainers could not at the same time prohibit the exercise of that licence within its own authority. On the basis of the judicial decision it would appear that the Council cannot prohibit the use of performing animals as a condition on a Temporary Entertainment Licence. Bobby Roberts is proud of the way his animals are kept and trained, the willingness which they perform relatively simple routines in a happy and relaxed manner and the pleasure which these animals bring to local families.

I have considered the letters of objection which the Council has received and note that many of them are very similar in content, most of them containing an identical paragraph, which suggests that this is material supplied by an animal activist organisation which these people have been prepared to repeat without, perhaps, any first hand knowledge. It is interesting that so many of the letters accept that the

circus animals are trained by kindness but the writers appear to oppose the concept of an animal performing. This is, of course, a personal view and one which should not be imposed on the people of Kilmarnock.

There is, of course, substantial animal welfare legislation and that, not licensing, is the proper channel to express these concerns but the concerns must be supported by specialist veterinary opinion and not just vague and unsubstantiated claims.

The circus moves once a week and the animals are transported in vehicles which compare favourably with any other form of animal transport. The journeys undertaken are invariably short and, what is more important, specialist veterinary opinion has not found evidence of undue stress in animals in travelling circuses. There is comment about Bobby Roberts' elephant Ann who is now retired but remains a family pet. She has reached an age that she would never have achieved in the wild and would be too distressed if she was taken away from the Bobby Roberts family. She would not survive being placed in a sanctuary or returned to the wild.

The comments of the Captive Animal protective Society which they laboriously repeat at every opportunity do not contain any specialist veterinary or scientific opinion to support their claims and they fail to acknowledge that Ann the elephant has a large exercise area in which she can roam freely during the day and is returned to her tent at night or during the day if it rains which is what she prefers.

The argument about non-animal circuses is misleading as circuses such as the Chinese State Acrobats are specifically non-animal entertainments and tend to attract a different audience than the traditional circuses do. The vague claims that there is a health risk following the circus is not borne out by scientific evidence nor is the claim that the circus creates a nuisance valid as the performance finishes by 9.30pm and circuses, unlike fairgrounds, are a very quiet form of entertainment.

I must also point out that, almost without exception, the letters refer to circuses in general and do not make any specific claims about The Bobby Roberts Circus which has an enviable reputation for animal care and understanding. The visit of the circus to Kilmarnock not only provides traditional and unique family entertainment but gives the opportunity for the people of the town to decide for themselves whether they still wish to see performing animals. I trust that the licence will be granted in the usual way.

Yours sincerely,



Malcolm Clay