

Report to the Cabinet

Report reference: C-073-2011/12
Date of meeting: 23 April 2012



Portfolio: Environment

Subject: Dog Control Orders

Responsible Officer: Jim Nolan (01992 564083)

Democratic Services Officer: Gary Woodhall (01992 564470)

Recommendations/Decisions Required:

(1) That, consultation be undertaken on the introduction of Dog Control Orders in respect of:

(a) the fouling of land by dogs and removal of dog faeces;

(b) the putting, and keeping a dog on the lead when directed to do so by an authorised officer; and

(c) limiting the number of dogs which a person may take onto any land to four.

Executive Summary:

The issue of irresponsible dog ownership particularly in relation to dog fouling is becoming an ever increasing problem. This is evidenced by the increase in number of complaints made by residents to the Council.

There is also an increase in the availability of dog walking services which in themselves present no problem but can become one when a large number of dogs are walked by one person who is unable to control them.

Officers often find themselves in a position where they have to speak to dog owners whose dogs are running free. In order to ensure their safety from what could be an aggressive dog they must have the power to require the owner to put the dog on a lead at that time.

The Clean Neighbourhoods and Environment Act 2005 introduced five dog control offences that can be controlled by Dog Control Orders. Section 55 of the Act enables local authorities to make Orders that apply to offences aimed at the control of dogs to specified land in their area.

Under the Act the Council can authorise others to enforce its provisions. Epping Forest land, by nature of the fact that it is under the control of the Corporation of London lies outside the enforcement remit of our officers.

Police Community Support Officers (PCSO's) based in our district have already been given powers to serve fixed penalty notices for offences such as littering, it is sensible therefore to extend those powers to cover the provisions set out in this report.

Reasons for Proposed Decision:

To enable officers of this Council, designated officers of the Corporation of London and PCSO's to ensure the proper control of dogs in our district.

Other Options for Action:

Members could choose not to consult on the adoption of any of the provisions outlined in the report or only to choose some of them. Officers have made their recommendations based on complaint evidence and extensive consultation with the Corporation of London. It is felt that the right balance has been struck between the need to ensure proper control and the freedoms of the dog owner.

Report:

1. The Clean Neighbourhoods and Environment Act 2005 has introduced five dog control matters that can be addressed by Dog Control Orders. These are:

- (a) fouling of land by dogs and removal of dog faeces;
- (b) the keeping of dogs on leads;
- (c) not putting, and keeping a dog on the lead when directed to do so by an authorised officer;
- (d) the exclusion of dogs from land; and
- (e) the number of dogs which a person may take onto any land.

Dog fouling offences are not applicable to certain working dogs, guide dogs and designated assistance dogs.

2. The Act provides that Orders may apply to all public land which is open to the air and to which the public are entitled or permitted to have access (with or without payment). There are exemptions to this definition which have been made by the Secretary of State for Forestry Commission Land.

3. The Act also allows authorised officers of the Council or any other person authorised in writing by the Authority (such as a Forest Ranger or Police Community Support Officer) to issue a fixed penalty notice offering members of the public an opportunity to discharge any liability for offences under the Dog Control Order.

4. The Council may specify the amount of fixed penalty in relation to their own Dog Control Orders. The penalty in relation to any offence under a Dog Control Order on summary conviction is a fine not exceeding level 3 on the standard scale.

5. The recommendation is to designate the whole of the District under three Dog Control Orders (DCOs) for:

- (a) dog fouling;
- (b) the putting, and keeping of dogs on leads when directed to do so by an authorised officer; and

(c) prescribing the number of dogs which a person may take on to designated land as no more than four.

6. Presently these are the only areas of concern which have been highlighted by complaint and consequently it is not proposed to introduce DCOs for the exclusion of dogs from specified land and the keeping of dogs on leads in specified areas, but to monitor complaints/enquires in relation to these two areas and review the need for DCOs for these two aspects in the future.

Dog Fouling

7. In 1998 the Council designated the whole of the district under the Dogs (Fouling of Land) Act 1996, making dog fouling an offence. The 1996 Act has a number of limitations, these include:

- (a) the legislation does not apply to roads over 40 miles per hour and land running adjacent;
- (b) fines are set at £50 and cannot be altered;
- (c) there is not an offence for offenders not to provide their details; and
- (d) there is an exclusion for land used for agriculture or for woodland, including all land in the ownership of the Corporation of London.

8. This proposal would re-designate the whole district, making it an offence for a person to permit a dog in their control to foul and fail to remove faeces forthwith from the whole of the district, including land owned by the Corporation of London.

Dogs on Leads

9. This DCO would enable officers to effectively carry out dog fouling enforcement work safely, by ensuring that the person responsible for a dog can be required to put and keep their dog(s) on a lead. It is not envisaged that this power will be used in many other circumstances, although Corporation of London officers may also use the power if a dog is deemed to be out of control on their land. In general it is envisaged that this DCO will be rarely used and will have little impact on dog owners, but is a useful power to aid enforcement.

Maximum Number of Dogs

10. The Council receives a number of complaints each year about “professional dog walkers” taking an excessive number of dogs onto recreational land and public areas. Complaints refer to the dogs being out of control, blocking footpaths and fouling without the person responsible being able to pick up the faeces because of the number of dogs in their control.

11. The Department for Environment, Food and Rural Affairs (Defra) guidance on Dog Control Orders refers to expert advice that the number of dogs which a person can control should not exceed six, but also suggests that a key factor to consider will be whether children use the proposed control area.

12. The Corporation of London favours a maximum number of four dogs in one persons control in any public areas within the district. The Council’s Animal Welfare Officer also favours a limit of four dogs, based on considerable experience as a dog owner and

enforcement officer. Nationally this type of order either restricts the number to four or six.

Additional Benefits

13. The additional benefits of adopting the Dog Control Orders as proposed are:
- (a) there is the option of dealing with the offence by way of fixed penalty notice thus saving Court and officer time;
 - (b) additional public land that currently has no protection from dog fouling would be covered; and
 - (c) the implementation of DCO's would by its very nature raise the profile of dog nuisance and promote responsible dog ownership.

Enforcement

14. Dog control orders will introduce a number of new offences and cover a lot more land, currently without any control. This is likely to result in more complaints that will have to be responded to by EFDC enforcement officers.

15. Some of the extra demand for enforcement could be addressed by refreshing and empowering PCSOs to target these offences and greater use of Environment and Neighbourhood Officers for pre-planned operations to target priority areas. The Corporation of London also plan to use their existing enforcement officers on their land as part of their normal duties, to record and investigate breaches of orders.

16. There may an initial increase in enforcement work and necessity to prosecute some offenders to publicise the requirement of the orders, but it is hoped that the orders will change the moral landscape and make it less acceptable for the few irresponsible dog owners to allow dogs in their control to continue with activities which the orders seek to control.

Procedure for Making Orders

17. The Dog Control Orders (Procedures) Regulations 2006 set out how Dog Control Orders shall be introduced. Before making a Dog Control Order the authority shall:

- (a) consult upon its proposals to make an order by publishing a notice of the proposal in a local newspaper circulating in the area in which the order would apply is situated;
- (b) consult every other authority with powers under Section 55 of the Clean Neighbourhoods and Environment Act 2005, which for EFDC means all Parish and Town Councils; and
- (c) where all or part of the land in respect of which the proposed order would apply is access land then we are required to consult with the Access Authority for that land, the Local Access Forum for that land and the Countryside Agency, now Natural England.

In addition it is proposed to include the Lea Valley Regional Park Authority as a major land owner in the consultation and to consult with residents via the Council's website.

18. The notice referred to in (a) above shall identify the land, summarise the Order, state where any maps identifying the land can be viewed, state the period in which representations

shall be made which should not be less than 28 days and state the address/e-mail where representations can be made. The Council must then (whilst having regard to any representation made) decide to proceed with the making of the orders.

19. At least seven days before any Dog Control Order comes into force, the Council shall:
 - (a) where practicable place signs summarising the Order in conspicuous positions on or near land where the Order applies;
 - (b) publish in a local newspaper in the area where the Order applies a notice that the order has been made and stating the place where it may be inspected or copies obtained;
 - (c) make available the information on the Council's website;
 - (d) send copies of the information to the Parish and Town Councils; and
 - (e) send copies of the information to the Access Authority, Access Forum and Natural England.

20. The DCO is then comes into force at least fourteen days after it is made.

21. Following the consultation process officers will bring another report back to Cabinet so that members can take into consideration its results and also to consider extending the powers of enforcement to officers of the Corporation of London and PCSO's.

Resource Implications:

It will be possible to enforce the dog control orders that are being requested from within existing resources

Legal and Governance Implications:

Whilst the Council is under no obligation to introduce Dog Control Orders, where a demonstrable need exists, not to do so could leave us open to criticism.

Safer, Cleaner and Greener Implications:

The proposed action is in full accordance with the Council's Safer, Cleaner, Greener strategy in that it seeks to ensure a cleaner environment by providing extended controls over dog fouling and a safer one by allowing the control of nuisance ones.

Consultation Undertaken:

Consultation has already been undertaken with the Corporation of London and statutory consultation will be required with the Town and Parish Councils and Natural England,

Background Papers:

Clean Neighbourhoods and Environment Act 2005
Dog Control Orders (Prescribed Offences and Penalties, etc) Regulations 2006
Dog Control Orders (Guidance on Sections 55 to 67 of the Clean Neighbourhoods and Environment Act 2005) DEFRA 2006
Local Environmental Enforcement (Guidance on the use of fixed penalty notices) DEFRA 2007

Dog Fouling and the Law (A Guide for the Public) ENCAMS 2006

Impact Assessments:

Risk Management

Officers enforcing the orders will receive additional training in order to ensure their safety.

Equality and Diversity

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications? No

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? No

What equality implications were identified through the Equality Impact Assessment process?
N/A.

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
N/A.