

## **Report to the Cabinet**

**Report reference:** C-038-2011/12  
**Date of meeting:** 3 December 2012



**Portfolio:** Environment

**Subject:** Dog Control Orders

**Responsible Officer:** Jim Nolan (01992 564083).

**Democratic Services Officer:** Gary Woodhall (01992 564470).

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### **Recommendations/decisions required:**

- (1) That the results of the Council's Dog Control Orders (DCO) consultation carried out between 2 August and 2 October 2012, in response to the decision by cabinet on 23 April 2012 (Report Ref C-073-2011/12) be noted;**
- (2) In light of the results of the consultation, that the Council adopts three DCO as proposed, making it an offence for a person in charge of a dog on any public land within the District to:**
  - (a) fail to remove dog faeces deposited on any public land;**
  - (b) fail to put a dog on a lead when directed to do so by an authorised officer, on any public land within the District; and**
  - (c) fail to limit the number of dogs which a person takes onto public land within the District to four dogs; and**
- (3) To agree not to install signs across the District advertising any DCO as part of the adoption process. This is not deemed to be practicable, but, to publish the details of any DCO as required.**

### **Executive Summary:**

Following a decision by Cabinet on 23 April 2012 (C-073-2001/12) the Council carried out a consultation process on the introduction of DCO in respect of dog fouling, putting and keeping a dog on the lead when directed to do so by an authorised officer and limiting the number of dogs which a person may take onto any public land to four.

A large majority of respondents were in favour of the three DCO as proposed.

The adoption of DCO as proposed is a key decision affecting residents, owners and other people in control of dogs over the whole of the District, with potential criminal sanctions for offenders if a DCO is not complied with. However, in most cases, for a first offence without any exacerbating features, a breach of a DCO would be dealt with by way of a fixed penalty, avoiding any criminal sanction if the fixed penalty is paid.

### **Reasons for proposed decision:**

We believe that there is a need for the proposed DCO because of the existing lack of control on Corporation of London land, amounting to 1689 hectares (4172 acres) of forest land within Epping Forest (and a further 739.5 hectares (1827 acres) of buffer land, some of which is publicly accessible) which could be effectively addressed through the adoption of the three proposed DCO.

Officers consider that the District wide adoption of the orders is sensible in order to ensure consistency and equity. If EFDC does not adopt the proposed orders the Corporation of London could seek to do so on their own land (under their secondary authority status) leading to inconsistency across the District, with different laws controlling dog fouling and different requirements on Corporation of London land compared with the rest of the District regarding the maximum number of dogs and dogs on a lead when requested by an authorised officer.

Survey results have shown support for the adoption.

If the proposed DCO are not adopted the Council could be criticised for not taking reasonable steps available to control dogs and prevent the risk of disease related to dog fouling (Toxocarasis – an infection of the roundworm toxocara canis) on all publicly accessible land with the District.

To improve the control of dogs within the district, particularly in relation to the clearance of dog fouling throughout the whole of the District on any public land. Removing the previous anomaly that meant that there was no dog fouling control on any publicly accessible land owned by the Corporation of London.

To enable officers of this Council, designated officers of the Corporation of London, and Police Community Support Officers (PCSO) to ensure the proper control of dogs in our District. The new DCO makes it an offence not to provide a name and address to an authorised officer enforcing a DCO, which is not currently the case.

To restrict the number of dogs in one persons control on any public areas to a more manageable number of four dogs.

The DCO should by their introduction alone (without the need for additional enforcement) promote responsible dog ownership, in particular reducing the amount of dog faeces left on public land, reducing the risk of disease and the unpleasant impact of clearing up dog faeces from clothing and shoes.

To assist enforcement officers to carry out dog related enforcement work safely.

### **Other options for action:**

Members could choose not to adopt any of the DCO outlined in the report or only to choose some of them. Officers have made their recommendations based on the benefits of introducing the DCO to fulfil the need to provide reasonable dog control on public land over the whole District and the result of the full consultation. It is felt that the right balance has been struck between the need to ensure proper control and the freedom of dog owners.

### **Report:**

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

- (a) fouling of land by dogs and removal of dog faeces;
- (b) the keeping of dogs on leads;
- (c) 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.

(N.B. 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. 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 a DCO.

4. The Council may specify the amount of fixed penalty in relation to their own DCO; this has previously been set at £75 if paid within 14 days and a discounted payment of £50 if paid within 10 days. The penalty in relation to any offence under a DCO on summary conviction is a fine not exceeding level 3 on the standard scale (currently £1000).

5. Following a decision by Cabinet on 23 April 2012 (C-073-2001/12) the Council carried out a consultation process on the introduction of DCO in respect of dog fouling, putting and keeping a dog on the lead when directed to do so by an authorised officer and limiting the number of dogs which a person may take onto any public land to four.

6. The consultation process was undertaken between 2 August and 2 October 2012. A number of organisations were consulted directly including all Town and Parish Councils within the District, Lea Valley Park Authority, Natural England, Conservators of Epping Forest, Licensed boarding kennels and other groups/organisations. The consultation process was also advertised in the Epping Forest Guardian on the 2 August 2012 and posted on the Council's website, with a number of supporting documents. The full results of the consultation and any additional comments are contained in the attached report at Appendix 1.

7. There were a total of 152 respondents to the survey. The main conclusions of the consultation are;

- 80% of respondents support the proposal to introduce a DCO to control dog fouling over the whole of the District, making it an offence to fail to pick up dog faeces deposited on any public land (111 of 139 respondents).
- 88% of respondents agree with the proposal to introduce a DCO that allows an authorised officer to request a dog to be put on a lead on any public land (122 of 137 respondents).
- 74% agree with the proposal to introduce a DCO that restricts the number of dogs a person can have in their control on any public land to four (100 of 136 respondents).

- 58% of respondents who did not agree with the restriction to four dogs said there should be a restriction on numbers (29 of 50 respondents).
- 85% of respondents who thought that there should be some restriction on the number of dogs, but not restricted to four, said that this should be “fewer than four” (53 of 62 respondents).
- Although a large majority supported the proposed DCO a number of relevant comments were also made as detailed in appendix 1. Some concerns were expressed regarding the level of enforcement, a shortage of bins, whether or not “wild” public accessible land should be included, whether less than 4 dogs should be the maximum and whether dogs should be on leads at all times in certain areas, etc.

8. Following the full consultation process and consideration of the issues raised the recommendation is to designate the whole of the District under three Dog Control Orders (DCO) for the following.

#### Dog Fouling

9. This DCO 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 any publicly accessible land within the District, including land owned by the Corporation of London.

10. Some respondents to the survey have suggested that it is not necessary or enforceable to apply control to publicly accessible “wild areas” of forest land. It is accepted that the risk of harm from dog fouling not being picked up in these areas is reduced and the likelihood of offenders being caught in these “wild areas” is minimal. However, the aim of the proposed DCO is clear and helps promote responsible dog ownership throughout the District. Trying to draw up detailed maps to exclude some “wild areas” is not practicable and may lead to more dog fouling in these specific areas. Therefore it is recommended that the DCO as proposed is adopted.

11. Some respondents have expressed concerns about the availability of bins and the risk of bagged dog waste being left on site rather than carried to a local bin or taken home. Although there are no plans to increase the number of bins specifically as part of the DCO adoption process, where a need for additional bins is identified and resources allow, the installation of further bins will be considered as per normal. More emphasis will be given to co-mingling of waste that allows bagged dog waste to be placed in any litter bins. As part of advertising any DCO that are adopted, the increased risk to health of leaving bagged dog faeces hanging around to fester will be raised, along with the potential legal action for littering bagged waste.

#### Dogs on Leads

12. 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.

13. This DCO had a very high level of support at 88%. Some concern was expressed regarding whether the proposed DCO will be enforceable due to a limited number of enforcement officers. Conversely some expressed concern that officers may be over zealous

with the use of the power. The power can only be used in relation to putting a dog on a lead if “such restraint is reasonably necessary to prevent a nuisance or behaviour by the dog likely to cause annoyance or disturbance” or “the worrying or disturbance of any animal or bird”. The restrictions on action form part of the wording of the proposed DCO, so afford some protection against the over zealous use of powers. We are not aware of any history of the over zealous use of enforcement powers at EFDC, and do not envisage any change in our approach to enforcement, which is clearly set out in the Environment & Street Scene Directorate’s adopted enforcement policy.

14. We believe that the proposed DCO is a useful tool to aid reasonable dog control. We accept that there are limitations on the level of enforcement; however, we do not believe that this a suitable reason for not adopting the proposed DCO.

#### Maximum Number of Dogs

15. This DCO would limit the number of dogs a person can have in their control on any publicly accessible land to four.

16. The Department for Environment, Food and Rural Affairs (Defra) guidance on DCO 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. The Corporation of London favours a maximum number of four dogs in one person’s 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.

17. Most respondents (74%) agreed with the proposed DCO to restrict the maximum number to four dogs, and of the 24% who did not agree, 85% of these said that fewer than four should be the limit. Therefore a large percentage agreed that the maximum should be set at four or below. Based on Defra guidance and the level of control imposed nationally, a maximum of four dogs is the lowest maximum level that officers can recommend as a reasonable restriction.

18. Some respondents have suggested that there is a difference between the control and impact of four large dogs compared with four small dogs, and an experienced dog owner may be able to adequately control more than four dogs. We accept that there are differences but it is not practical to adopt a DCO that reflects these differences and a maximum of four dogs is a reasonable limit for all dog breeds and owners that is supported by the majority of respondents.

19. The three proposed draft DCO are shown at Appendix 2.

#### Enforcement

20. DCO 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 enforcement officers. Some of the respondents to the consultation commented on how effective the proposed DCO will be without additional enforcement work/resources?

21. Some of the extra demand for enforcement would be addressed by refreshing and empowering PCSO to target these offences and greater use of EFDC 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.

22. Following the adoption of the orders it may be considered that the installation of signs in hotspot areas would be beneficial. Subject to budgetary restraints this will be carried out. However, it should be noted that no specific budgetary provision exists for this.

#### Procedure for Making Orders

23. The Dog Control Orders (Procedures) Regulations 2006 set out how DCO 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 (Completed);

(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 (Completed); and

(c) where all or part of the land in respect of which the proposed order would apply is access land (land subject to Part 1 of the Countryside and Rights of Way Act 2000) 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). Natural England, Essex County Council, Conservators of Epping and Lea Valley Park Authority were all consulted directly.

24. 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.

25. The Council must then (whilst having regard to any representation made) decide whether to proceed with the making of the orders.

26. 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; (Note – The Council does not propose to install signs across the District as this is not deemed to be practicable, but will publish the details of any DCO as detailed below, as well as issuing a press release and the use of any other opportunities to advertise the proposed DCO that arise);

(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.

27. The DCO then come into force at least fourteen days after it is made.

### **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 need exists, not to do so could leave us open to criticism.

The formal consultation and notice procedure for implementing a DCO has been completed.

### **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:**

Full consultation has been carried out as outlined in this report.

### **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

List of people/organisations consulted directly by EFDC on the proposed DCO

Anticipated "Frequently Asked Question" posted on EFDC's web site.

### **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.