

ADOPTION OF NEW POWERS UNDER THE CLEAN NEIGHBOURHOOD AND ENVIRONMENT ACT 2005

(Forward Plan Ref. No. 6/07)

1 PURPOSE OF THE REPORT

- 1.1 The purpose of this report is to inform Members about the availability of new powers that provide sensible controls over dogs in public places and to make recommendations for the approval of new Dog Control Orders, following consideration of the results from recent public consultation.

2 BACKGROUND

- 2.1 The Council encourages responsible dog ownership and has a range of Orders and Byelaws in place to protect public health. These include requirements for:-
- A person in charge of dog to keep the dog on a lead on roads, which includes pavements and/or footways;
 - A person in charge of dog to remove dog faeces from all land, other than woodlands;
 - Dogs to be kept under proper control in certain public open spaces.
- 2.2 At a meeting of the former Environmental Services Committee in March 2007 consideration was given to the results of a residents survey related to street cleansing. This highlighted issues relating to dog fouling and Members asked officers to explore enforcement options.
- 2.3 The dog control provisions of the Clean Neighbourhood And Environment Act 2005 (CNEA) came into force on 6 April 2006 and are part of a comprehensive range of measures to deal with environmental crime. The guidance issued by DEFRA encourages local authorities to explore the use new powers and consult the public widely regarding their introduction. The existing arrangements for dealing with stray dogs are unaffected by these provisions.
- 2.4 The Act introduces a simpler system for local authorities to introduce Dog Control Orders for the following offences:-
- Failing to remove faeces;
 - Not keeping a dog on a lead;
 - Not placing a dog on a lead when directed to do so by an authorised officer;
 - Permitting a dog to enter land from which dogs are excluded;
 - Taking more than a specified number of dogs onto land.

2.5 The CNEA has also introduced the following new provisions:-

- The introduction of Fixed Penalty Notices (FPN) for offences related to dog bans, dogs on a lead and associated issues.
- The opportunity for Councils to determine the level of penalty locally for FPNs. This can be set between £50-£80, with a default amount of £75.
- The Council may introduce an early payment discount in the event the FPN is paid early.
- Authorised officers now have the power to require the name and address of any person who has breached a Dog Control Order for the purpose of issuing a FPN.

2.5 Local authorities like Rochford, with existing orders in place under the Dogs (Fouling of Land) Act, can continue to enforce them. However, the fixed penalty must remain at £50. Similarly, offences under the bye-laws have also been frozen and the FPN procedure is not available. No amendments can be made to existing orders, no early payment discount is applicable and the Council cannot prosecute a person for providing a false name or address.

2.6 With regard to the enforcement of these provisions, no specific permanent resource is currently available. The employment of additional enforcement staff to deal with dog fouling issues was considered when the Control of Dogs (Fouling of Land) Act was formally adopted in June 2002 and has been considered subsequently by Members as part of the budget process.

2.7 Recently however, external funding has been identified to enable an environmental enforcement officer to be employed on a one-year pilot basis at no cost to the Council. It is proposed that this officer will be employed from April 2008 and have a wide remit that will encompass all environmental crimes. Officers will review the effectiveness of this arrangement over the next twelve months and will also explore opportunities to use our own staff and work with our partners, in more a flexible way.

3 KEY MESSAGES FROM PUBLIC CONSULTATION

3.1 Widespread consultation on the potential introduction of new measures to balance the needs of dog owners and those affected by dogs has been undertaken. This has included a questionnaire within the Council's newspaper 'Rochford District Matters' (RDM) and an on-line survey on our website. Additionally, presentations have been made to all Area Committees and letters have been sent to all Parish Councils, who are secondary enforcing authorities under the legislation. Following contact with the Kennel Club, separate letters were also sent to local Dog Clubs.

3.2 Over 2000 questionnaires were returned from our RDM and website surveys. The vast majority, 1732, were from RDM survey and 308 from the website survey. 30% of the RDM respondents were dog owners, compared to 72% of

those completing the website survey. The survey results were generally consistent and full details of these responses are shown in Appendix 6.

- 3.3 Over 95% of all respondents agreed that measures should be in place to control dog fouling and a similar proportion of RDM respondents considered that this was an issue locally. In contrast, in the website survey the majority of respondents did not consider that dog fouling was an issue. Very few respondents considered that either stray dogs or aggressive dogs were an issue in the Rochford district.
- 3.4 Two Dog Clubs responded directly and their views were consistent with the other consultation responses received. The major issue that they wished to emphasise was that the needs of dogs and responsible dog owners, within our rural community, had to be taken into account. They accepted that the issue of irresponsible dog owners needed to be addressed.
- 3.5 Feedback from the Parish and Town Councils is still awaited and will be reported verbally to the meeting as necessary.
- 3.6 With regard to the main issues that were consulted upon, the following table depicts the current arrangements, the consultation results and the emerging proposals:-

Issue	Current situation	Consultation		Proposal
		RDM	Website	
Should dogs be on a lead in:-				
Shopping precincts	Yes	Yes 98%	Yes 98%	Yes
Large parks	No	No 54%	No 94%	No
Parks and other green areas	No	Yes 49%	No 94%	No
Footpaths adjacent to any road	Yes	Yes 94%	Yes 84%	Yes
Footpaths adjacent to roads with a 40 MPH or over limit	Yes	Yes 95%	Yes 92%	Yes
Should dogs be banned from:-				
Shopping precincts	No	Yes 52%	No 80%	No
Large parks	No, informal ban in place at sporting facilities	No 82%	No 100%	No
Parks and other green areas	No	No 75%	No 99%	No

Issue	Current situation	Consultation		Proposal
		RDM	Website	
Children's play areas	No, informal ban only	Yes 91%	Yes 73%	Yes
Should there be a maximum number of dogs that one person can walk?				
	N/A	Yes 77%	Yes 49%	Yes
Limit	N/A	2	4	4

4 PROPOSALS

4.1 On the basis of the consensus of public opinion, it is proposed that the following Orders should be introduced (See Appendices 1 to 5):-

- (a) **The Fouling of Land by Dogs (Rochford) Order 2008** – introduces the offence of failing to remove faeces and replaces the existing Administrative Area of Rochford District Council (Fouling of Land) Order.
- (b) **The Dogs Exclusion (Rochford) Order 2008** – introduces the offence of failing to exclude dogs from enclosed areas such as children's play areas.
- (c) **The Dogs on Leads (Rochford) Order 2008** – requires dogs to be kept on leads on each and every length of road (which includes pavements and/or footways). This would replace the existing Rochford District Council's (Control of Dogs on Roads) Order 1987 and existing Byelaws affecting specified parks.
- (d) **The Dogs on Leads by Direction (Rochford) Order 2008** – a person in charge of dog shall be guilty of an offence if he does not comply with a direction given to him by an authorised officer to put and keep the dog on a lead. This is a new power and would apply to any land in the open air to which the public have access. This power will be used where dogs being exercised off the lead are causing problems to other users of the land and it is felt the dog should be kept under control.
- (e) **The Dogs (Specified Maximum) Rochford Order 2008** - Introduces an offence of a person having control of more than four dogs at any one time in a public place.

4.2 With regard to dog exclusions, there is marginal support in the RDM survey for introducing a ban in shopping precincts. It is considered, however, that appropriate control can be achieved with the dogs on a lead order.

4.3 It is not considered appropriate to formalise the current exclusion arrangements in place on sports fields, whereby the pitches are delineated, as this is considered unenforceable. The only method by which this could be

effectively enforced would be to introduce a 'dogs on a lead order' for the remainder of the park, clearly such measures would not receive public support. It is considered that appropriate control within large parks can be achieved by use of the 'Dogs on a Lead by Direction'.

- 4.4 It is proposed that the level of fixed penalty for these offences be set at the default figure of £75. In considering the level of penalty it should be appreciated this penalty is considerably less than the maximum fine available for the prosecution of offences in the Magistrates Court, which currently stands at £1,000.

5 PROCEDURE FOR MAKING THE ORDERS

- 5.1 The Dog Control Orders (Procedures) Regulations 2006 require that before a Council can make a dog control order, the authority must publish a notice describing the proposed order in a local newspaper circulating in the same area as the land to which the order(s) would apply and invite representations on the proposal.

- 5.2 The notice must:-

- Identify the land to which the order(s) will apply:
- Summarise the order(s):
- If the order(s) refer to a map, say where the map can be inspected. This must be at an address in the Authority's area, be free of charge, and available at all reasonable hours during the consultation period;
- Give the address to which, and the date by which, representations must be sent to the authority. The final date for representation must be at least 28 days after the publication of the notice.

- 5.3 At the end of the consultation period the authority must consider any representations that have been made. If it then decides to proceed with the order(s), it must decide when the order(s) will come into force. This must be at least 14 days from the date on which it was made.

- 5.4 Once an order(s) has been made, the authority must, at least 7 days before it comes into force, publish a notice in a local newspaper circulating in the same area as the land to which the order(s) applies stating:

- that the order(s) has been made; and
- where the order(s) may be inspected and copies of it obtained.

Where practicable, a copy of the notice must also be published on the authority's website.

- 5.5 If, after considering representations on a proposal to make an order an authority decides to amend its proposal, it must start the procedure again, publishing a new notice describing the amended proposal.
- 5.6 There is a legal requirement that, where practicable, signs must be placed summarising the order on land to which a new order applies, thereby informing the public that land is subject to an order. For example, if an order were made excluding dogs from a sporting facility, copies of the order should be placed at the entrances to the park when it was first made, and permanent signs should be erected informing the public that dogs are not permitted in the designated area.
- 5.7 Where a dog control order applies to a large area of land, for example, an order in respect of fouling by dogs, it may not be feasible to post copies of the order on the land, but signs warning the public that it is an offence not to clear up dog faeces should be placed at regular intervals.
- 5.8 Subject to agreement to the proposals in this report, it is proposed to bring a further report back to the Executive Board to outline the details of any representations received following publication of the statutory notices.

6 IMPLICATIONS

Risk Implications

- 6.1 Failure to deal with irresponsible dog owners could result in criticism for not making best use of available powers, poor BVPI 199 (cleanliness standards) performance and a need for further revenue investment to deliver reactive cleaning.

Financial Implications

- 6.2 There are limited financial implications arising from this report. The cost of the statutory notices that must be placed in local newspapers and of new signage can be contained within existing budgets. The employment of an enforcement officer on a one-year pilot basis has been funded from our Smokefree England Grant of £37,539. There were no specific conditions imposed as to how this grant could be spent.

Legal Implications

- 6.3 Local Authorities are empowered under the Clean Neighbourhood And Environment Act 2005 to make dog control orders in accordance with the statutory process detailed in section 5 of the report. There is no longer any necessity to seek approval from the Secretary of State as was required in respect of byelaws.

Should these orders be made the existing provisions contained within local byelaws and the Orders made under the Dogs (Fouling of Land) Act 1996 will cease to have effect. Should no action be taken, no further amendment to

existing Orders or bylaws can be made and the level of penalty will not be increased.

Policy Implications

- 6.4 There are currently a variety of provisions in place requiring the removal of canine faeces, dogs to be kept on a lead, keeping dogs under proper control and voluntary dog bans. The recommendations contained within this report are consistent with these existing requirements, but consolidate the controls within the latest legislative framework.

7 RECOMMENDED

- 7.1 It is proposed that the Board **RESOLVES**

- (1) That, subject to any proposals from Members, notice of the draft orders as detailed in Appendix 1 – 5, be published in the Evening Echo together with a copy of the orders being published on the Council's website, to include:-
 - (a) identification of the land to which the orders will apply;
 - (b) a summary of the orders;
 - (c) if the order will refer to a map, where the map can be inspected; and
 - (d) the address to which, and the date by which, representations must be sent to the authority. The final date for representations will be at least 28 days after publication.
- (2) That a further report is submitted to the Executive Board to outline the details of any representations received following publication of the statutory notices.
- (3) That the level of penalty for the Fixed Penalty Notices be set at £75.

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Background Papers:-

Defra Guidance on the Clean Neighbourhoods and Environment Act

Report to Community Services Committee, Implementing the Dogs (fouling of land)
Act 1996 (min 217/01) – 2 July 2002

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