

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

1 SUMMARY

- 1.1 This report advises Members about the availability of new powers that provide sensible controls over dogs in public places and makes recommendations in respect of new Dog Control Orders.

2 BACKGROUND

- 2.1 On 9 January 2008 the Executive Board considered a report, which recommended the adoption of new powers under the Clean Neighbourhood and Environment Act (CNEA). It resolved that a Sub-Committee be tasked with considering the detail of the proposals and the issuing of press releases to aid public understanding. This Sub-Committee is required to report back to the Executive Board with its recommendations.

3 DETAILS OF THE NEW LEGISLATION

- 3.1 The CNEA introduces a simpler system for local authorities to introduce Dog Control Orders for the following offences:-

- Failing to remove faeces;
- Permitting a dog to enter land from which dogs are excluded;
- Not keeping a dog on a lead;
- Not placing a dog on a lead when directed to do so by an authorised officer;
- Taking more than a specified number of dogs onto land.

- 3.2 The Act 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. These can be set between £50-£80, with a default amount of £75.
- The opportunity for Councils to introduce an early payment discount in the event the FPN is paid early.
- The power for authorised officers to require the name and address of any person who has breached a Dog Control Order for the purpose of issuing a FPN.

- 3.3 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.
- 3.4 Over 2000 questionnaires were returned from our *RDM* and website surveys. The vast majority, 1732, were from the *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. Full details of the results from this public consultation are shown in Appendix 6.
- 3.5 A formal consultation on Dog Control Orders was sent to all Parishes in the District on 14 December 2007. The consultation was seeking their views on five proposed orders identified in this report.
- 3.6 The Council has received written responses from five Parishes (Ashingdon, Rawreth, Great Wakering, Hullbridge and Hockley). Verbal comments have been received from Rochford and Hawkwell. All of these Parishes have agreed to the five Dog Control Orders being introduced.
- 3.7 Officers have also received twelve written representations and in the order of twenty telephone calls from the public as a result of the consultation and press coverage. Details of these comments are shown in the appropriate sections below that examine the individual proposals. More general observations, together with a briefing note received from the Kennel Club, are detailed in Appendix 7.

4 PROPOSALS

- 4.1 In general terms, the proposals are to introduce local orders in respect of:-
- Dog fouling that are broadly similar to the existing arrangements that were introduced in 2002 under the Dogs (Fouling of Land) Act;
 - To formalise a ban upon dogs in enclosed children's play areas;
 - To require dogs to be kept on a lead when they are on any road, or on any footways or pavements;
 - To introduce a new requirement to enable Council officers to require specific dogs to be placed on a lead in other public areas that are open to the air, when this is considered necessary; and
 - To introduce a maximum of the number of dogs that one person can have under their control at any one time.

All of these proposals are in line with the responses received as part of the public consultation process.

Fouling of Land by Dogs

- 4.2 The proposed Fouling of Land by Dogs Order would require the person in charge of a dog to remove the dog faeces from any specified land within the District forthwith. It is proposed that this Order will apply to all land, which is open to the air (which includes land that is covered but open to the air on at least one side) and to which the public are entitled or permitted to have access with or without payment. A copy of the Draft Order is presented at Appendix 1.
- 4.3 Whilst this Order refers to a statutory exemption for “land that is placed at the disposal of the Forestry Commissioners” there is no land within the District that is covered by this definition at the present time, consequently this Order would apply to all land in the open air to which the public have access.
- 4.4 This contrasts with the current arrangements under the Dogs (Fouling of Land) Act 1996 which does not apply to:-
- land used for agriculture or woodlands;
 - land that is predominantly marshland, or heath;
 - common land to which the public are entitled or permitted to have access; and
 - land comprising or running along a highway with a speed limit above 40 mph.
- 4.5 Under the proposed new Order there will be a statutory defence for individuals where:-
- they have a reasonable excuse;
 - the owner or occupier of the land has given consent; or
 - the individual is registered blind or has certain other disabilities.

Public Consultation

- 4.6 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.

4.7 63% of *RDM* respondents (28% website) considered that there is a problem as a result of dog fouling in the District. This contrasts to 53% of those returning our most recent 'How clean are our streets' survey.

4.8 An overwhelming majority, 95% (*RDM*) and 97% (website) agreed that it should be an offence not to clean up after a dog had fouled in a public place.

Parish Consultation

4.9 None of the seven Parishes that reported back to the Council (Ashingdon, Hawkwell, Hockley, Hullbridge, Great Wakering, Rawreth, and Rochford) had any objection to this proposal.

4.10 Ashingdon Parish Council highlighted some concerns related to dog fouling and suggested that modern signage should be used to publicise the offences. The Parish also suggested that more dog bins should be installed.

Representations

4.11 Respondents highlighted that responsible owners do clean up after their dogs.

Dog Exclusions

4.12 The proposed Dog Exclusion Order would prohibit a person in charge of a dog from allowing the dog to enter all enclosed children's play areas. A copy of the Draft Order is presented at Appendix 2. This includes the children's play areas in the following public open spaces:-

- King George's PF, Ashingdon Road, Rochford
- Playstalls, Off Little Wakering Road, Wakering
- Canewdon Recreation Ground, Althorne Way, Canewdon
- Rowan Way, Canewdon
- Great Wakering Recreation Ground, High Street, Wakering
- Seaview Drive, Wakering
- Morrins Close, Wakering
- Glebe Close, Wakering
- Conway Avenue, Wakering
- Clements Hall Recreation Ground, Park Gardens, Hawkwell
- Hawkwell Common, Hawkwell

- Magnolia Nature Park, Rectory Road, Hawkwell
 - Hockley Woods, Main Road, Hockley
 - Laburnum Grove, Hockley
 - Betts Wood, Westminster Drive, Hockley
 - Plumberow Mount Avenue, Hockley
 - Hullbridge PF, Pooles Lane, Hullbridge
 - Rawreth PF, Rawreth Lane, Rayleigh
 - Fairview PF, Victoria Road, Rayleigh
 - Grove Recreation Ground, Grove Road, Rayleigh
 - Sweyne Park, Rayleigh
 - St John Fisher PF, Little Wheatley Chase, Rayleigh
 - Causton Way, Rayleigh
 - Boston Avenue, Rayleigh
 - Hartford Close, Rayleigh
 - Fyfield Path, Rayleigh
 - Elsenham Court, Rayleigh
 - King George's PF, Bull Lane, Rayleigh
 - Bedford Close, Rayleigh
 - Warwick Drive/Sutton Court Drive, Rochford
 - Rochford Recreation Ground, Stambridge Road, Rochford
- 4.13 There are currently no formal exclusions in place for dogs. A voluntary ban is in place in respect of children's play areas. A voluntary ban is also in place on the sports fields of some public open spaces, where the perimeter of pitch is delineated in order to discourage dog owners from exercising their dogs.
- 4.14 It is not considered appropriate to formalise the exclusion of dogs from sports fields, as this is considered to be unenforceable.

4.15 Under the proposed new Order there will be a statutory defence for individuals where:-

- they have a reasonable excuse;
- the owner or occupier of the land has given consent;
- the individual is registered blind or has certain other disabilities.

Public Consultation

4.16 There was strong support 91% (*RDM*) and 73% (website), for dogs being banned in children's play areas. Whilst there was some support, 52% (*RDM*) for a dog ban in shopping precincts, (20% website), there was no support for a ban in either large parks 13% (*RDM*), 0% (website) or in parks and other amenity green areas 21% (*RDM*); 1% (website).

Parish Consultation

4.17 None of the seven Parishes that reported back to the Council (Ashingdon, Hawkwell, Hockley, Hullbridge, Great Wakering, Rawreth, and Rochford) had any objection to this proposal.

4.18 Rochford Parish Council concurred with the proposal to include the playspaces owned by Rochford Housing Association.

Representations

4.19 There were concerns with regard to the press speculation that dogs could be banned from woodland areas and parks. No such proposals have been made. All respondents agreed that dogs must be kept out of children's play areas.

Dogs On A Lead

4.20 The proposed Dogs on a Lead Order would require a person in charge of a dog to keep it on a lead whilst the dog was on any road, including pavements and footways. A footway means a way comprised in a highway, which also comprises a carriageway, being a way over which the public have a right of way by foot only.

4.21 It is not proposed to include a requirement for dogs to be on a lead on any public footpaths or bridleways, as we have focused on areas where there is a risk of injury to a dog or a potential risk to the users of other road vehicles. This requirement would therefore apply to all paved areas adjacent to roads but would not apply to rural paths, public open spaces or woodlands. A copy of the Draft Order is presented at Appendix 3.

- 4.22 This proposal represents good practice advocated by national bodies and reflects existing powers under the Road Traffic Act. Separate legislation requires dogs to be on a lead when on access land between 1 March and 31 July and whenever they are in the vicinity of livestock.
- 4.23 Under the proposed new Order there will be a statutory defence for individuals where:-
- they have a reasonable excuse; or
 - the owner or occupier of the land has given his consent.

Public Consultation

- 4.24 There is overwhelming support 98% (*RDM*) (96% website) for the requirement for dogs to be on a lead in shopping precincts.
- 4.25 Similarly there is overwhelming support for dogs to be on a lead whilst on a footpath adjacent to a road, 94% *RDM* (84% website).
- 4.26 The public were consulted on whether these requirements should apply on roads where the speed limit was above or below 40 MPH, but there was only a negligible difference in the results.
- 4.27 There was for some support for dogs to be on a lead in other areas. Large parks 43% (*RDM*); 6% (website); parks and amenity areas 49% (*RDM*); 6% (website).

Parish Consultation

- 4.28 None of the seven Parishes that reported back to the Council (Ashingdon, Hawkwell, Hockley, Hullbridge, Great Waking, Rawreth, and Rochford) had any objection to this proposal.
- 4.29 Great Waking Parish Council suggested that Great Waking Common, Common Road should be added to the list of sites where dogs must be kept on leads.
- 4.30 Hullbridge Parish Council suggested that Pooles Lane recreation ground should be added to the list of sites where dogs should be kept on a lead.
- 4.31 Hockley Parish Council suggested that the Marylands Nature Reserve that Rochford District Council lease to the Parish should be added to the list of sites where dogs should be kept on a lead.

Representations

- 4.32 Residents supported the proposal that dogs should be on a lead near roads. There were concerns that dogs should be permitted off their leads in parks, open spaces and woodlands.

Dogs On A Lead By Direction

- 4.33 The proposed Dogs on a Lead by Direction Order would require the person in charge of a dog to place the dog on a lead if requested to do so by a Council officer. It is intended that this power would only be used when a specific dog is not under proper control and is causing an unreasonable disturbance to other users of a public open space, for example. This power is considered to complement existing arrangements, specifically the informal dog ban in place at sports fields and a requirement under existing byelaws to keep dogs under proper control in public open spaces.
- 4.34 It is proposed that this order should apply to all land, which is open to the air (which includes land that is covered, but open on at least one side) and to which the public are entitled or permitted to have access, with or without payment. A copy of the Draft Order is presented at Appendix 4.
- 4.35 The existing Byelaws referred to in paragraph 4.5.1 above, require dogs to be kept under proper control at certain named pleasure grounds including Hockley Woods. Full details of these Byelaws are contained in Appendix 8.
- 4.36 It should be appreciated that as the requirements of the byelaws do not include a specific power to require that dogs are placed on a lead, they will continue to apply. There is a statutory defence under the proposed order where the individual has a reasonable excuse or where the owner or occupier has consented.

Public Consultation

- 4.37 There were no specific questions asked with regard to this new power. However, only 7% (*RDM*) and 7% (website) considered that we had a problem with stray dogs and only 15% (*RDM*); 8% (website) considered that we had a problem with dangerous dogs.

Parish Consultation

- 4.38 None of the seven Parishes that reported back to the Council (Ashingdon, Hawkwell, Hockley, Hullbridge, Great Wakering, Rawreth, and Rochford) had any objection to this proposal.

Representations

- 4.39 No comments were received regarding this proposal.

Specifying A Maximum Number Of Dogs That Can Be Walked

- 4.40 The proposed Dogs (Specified Maximum) Order would introduce an offence for a person in charge of a dog, having more than the specified number of dogs under their control at any one time.
- 4.41 It is proposed that this new order should apply to all land, which is open to the air (which includes land that is covered, but open on at least one side) or where the public are entitled or permitted to have access with or without payment. A copy of the Draft Order is presented at Appendix 5.
- 4.42 There are no provisions in place in respect of this issue at present. Under the proposed new order there will be a statutory defence where the individual has a reasonable excuse or where the owner or occupier has consented.
- 4.43 Officers have ascertained that the National Petsitters body, have 21 individuals registered within a 20 mile radius of Rochford town centre. Their code of practice specifies that "Dog Walkers should not walk more than four dogs at any one time. The concern here is one of both being able to keep the dogs under proper control and of the person concerned being able to deal with any dog fouling issues that may arise.

Public Consultation

- 4.44 There was broad consensus for prescribing a limit on the number of dogs that a person can walk at any one time, 77% (*RDM*); 49% (website).
- 4.45 The majority view was that there should be a limit of two dogs (*RDM*) and three dogs in the website survey. Of these respondents 95% (*RDM*) and 88% (website), considered that this Order should specify four or fewer dogs.

Parish Consultation

- 4.46 None of the seven Parishes that reported back to the Council (Ashingdon, Hawkwell, Hockley, Hullbridge, Great Wakering, Rawreth, and Rochford) had any objection to this proposal.
- 4.47 Ashingdon Parish suggested that a dog walker must not have more than two dogs under their control at any one time.

Written Representations

- 4.48 This issue resulted in by far the most concern from individuals, although it must be emphasised that the majority of those who opposed the proposal had a vested interest, as they operated dog walking or dog minding businesses. Respondents suggested a maximum number of dogs that varied between one and having no restriction whatsoever. The point was made that individuals running such businesses were experienced dog handlers and were capable of controlling more dogs than someone who had a dog as a pet.

The Level Of Penalty

- 4.49 Currently offences under byelaws can only be pursued as a prosecution in the Magistrates Court. Both the Dogs (Fouling of Land) Act and the Clean Neighbourhood and Environment Act allow for both prosecution of offenders and for the use of Fixed Penalty Notices.
- 4.50 Under the CNEA local authorities are given discretion in setting the level of penalty for FPNs between £50 and £80, if no level is set the default value is £75. We are also able to set different penalties for different offences and to allow for a reduced penalty if this is paid promptly.
- 4.51 Hawkwell Parish Council suggested a discount for early payment of a FPN. Ashingdon Parish Council suggested that there should be no reduction.

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 seven 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 Once Members have determined which, if any of the proposed orders are to be introduced, appropriate press release/s and statutory public notices will be prepared. It is proposed that this Sub-Committee recommends that a further report be submitted 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. New indicator set NI 195: Improved street and environmental cleanliness (levels of graffiti, litter, detritus and fly posting).

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.
- 6.3 Local Authorities categorised as Excellent or Good in terms of CPA, or with relevant service inspection results between 2 and 4 stars, can retain the income from fixed penalty notices.

Legal Implications

- 6.4 Local Authorities are empowered under the Clean Neighbourhoods 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.
- 6.5 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 byelaws can be made and the level of penalty will not be increased.

Policy Implications

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

7 RECOMMENDATION

- 7.1 It is proposed that the Sub-Committee **RECOMMENDS**
- (1) That Members' views are sought as to whether the additional sites identified by the Parish Councils should also be subject to the Dogs on a Lead Order. Namely:- Great Waking Common, Common Road, Pooles Lane Recreation Ground and Marylands Nature Reserve
 - (2) That notice of the draft orders, as detailed in Appendices 1 – 5, be published in the *Yellow Advertiser* together with a copy of the orders being published on the Council's website, to include:-
 - identification of the land to which the orders will apply;
 - a summary of the orders;
 - if the order will refer to a map, where the map can be inspected; and
 - 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.
 - (3) That a further report is submitted to outline the details of any representations received following publication of the statutory notices.

- (4) That the level of penalty for the Fixed Penalty Notices be set at £75 with no reduction for early payment.

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Background Papers:-

None.

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If you would like this report in large print, braille or another language please contact 01702 546366.