

## **CABINET – 5<sup>th</sup> July 2007**

### **Report of the Director of Housing and Health**

#### **ITEM            Proposed Dog Control Orders**

##### **Purpose of the Report**

To seek Cabinet endorsement of a proposed consolidation of the existing designation under the Dogs (Fouling of Land) Act 1996 and dog byelaw controls into new Dog Control Orders.

##### **Recommendations**

1. That the existing delegation to the Director of Leisure and Environment to issue Dog Control Orders be removed from the constitution.
2. That authority to make Dog Control Orders under the Clean Neighbourhoods and Environment Act 2005(CNEA), including the updating and consolidation of existing dog control provisions, undertaking the necessary statutory consultation and issuing the Orders in the event of there being no significant changes to them following the consultation be delegated to the Director of Housing and Health and the constitution be amended accordingly.
3. That in the event of the consultation process identifying the need for significant changes to the proposals set out in the report, revised proposals for the Dog Control Orders are considered by Cabinet before the orders are made.
4. That the amount of fixed penalty for an offence under a Dog Control Order be set at £80 with a discounted sum of £50 for early payment within 10 days of receipt of the notice
5. That authority to issue and enforce Fixed Penalty Notices under the Clean Neighbourhoods and Environment Act 2005 for control on dogs be delegated to the Director of Housing and Health and the constitution amended accordingly.

##### **Reasons**

1. To ensure that responsibility for making Dog Control Orders rests with the appropriate Director.
2. To ensure continuity for the control of dogs on public land following the repeal of the Dogs (Fouling of Land) Act 1996.
3. To enable Cabinet to reach a decision on any proposed changes to existing dog control laws in the borough.

4. To ensure consistency of fixed penalty notices for environmental offences and to encourage good rate of payment by offering discount for early payment of fixed penalty.
5. To enable effective enforcement of control on dogs by appropriate officers.

### Policy Context

Theme 1 goal 1 of the Corporate Plan commits the authority to achieve “clean and safe streets and public places with the Council maintaining and enforcing high standards of cleanliness throughout the borough”. These proposals provide a legal framework which can facilitate this goal.

### Background

The Clean Neighbourhoods and Environment Act 2005 provides powers for District and Parish/Town councils to make Dog Control Orders (DCO's) to address the following offences on prescribed areas of land

- a) failing to remove dog faeces;
- b) not keeping a dog on a lead;
- c) not putting, and keeping, a dog on a lead when directed to do so by an authorised officer;
- d) permitting a dog to enter land from which dogs are excluded;
- e) taking more than a specified number of dogs onto land.

The Act consolidates a number of existing statutes relating to these offences contained in the Dogs (Fouling of Land) Act 1996 (DFLA) and local byelaws.

### Current Position

A substantial amount of land within the Borough is subject to a Designation Order made by the Council in 1998 under the Dogs (Fouling of Land Act) 1996 (see appendix A). Any person in charge of a dog who fails to clear up after the dog has defecated on the designated land is guilty of an offence and may be asked to pay a fixed penalty of £50 or risk a maximum penalty of £1000 if convicted in the Magistrates' Court.

The Council also adopted dog ban and dogs on lead byelaws in 1995 covering parks and recreation areas under its control and management (see appendix B). Similarly some Parish Councils have made their own byelaws to cover land under their control or management.

Enforcement of the byelaws is by way of prosecution in the Magistrates' Court, as there are no fixed penalty provisions under the byelaw system, with a maximum penalty of £500 on conviction.

Enforcement of the Dog Fouling Designation Order on land other than that under the control and management of the Parish/Town Councils has been carried out by the Borough Councils dog warden. In addition, the Street Wardens have worked in

collaboration with the Parish/Town Councils to patrol their land where time and resources permit. Some Parishes have also employed their own wardens to enforce the Designation Order and their own byelaws.

### Proposals

We propose to closely replicate the existing statutory controls in new Dog Control Orders under the CNEA. The value of this is fourfold:

1. The penalties for offences against a Dog Control Order are either a fixed penalty notice of between £50- £80 or prosecution carrying a maximum fine of £1000. The exact amount of the fixed penalty notice is determined by the local authority, although the Act provides a standard default amount of £75. This can be amended periodically by the authority. Offences under the Dogs (Fouling of Land Act) 1996 cannot be varied and so as time progresses inflation decreases the relative punitive effect of the fine. Creating a DCO will therefore enable penalties to keep pace with inflation. The proposed adoption of an £80 fixed penalty fine is intended to mirror existing fines for littering and flyposting and to maximise the deterrent effect of the DCO.
2. Receipts from DCO fixed penalty notices are retained by the authority who issues the notice. Although some Parish Councils have chosen to employ their own officer, under the current arrangements they do not receive the return from the payment of notice. The adoption of a DCO has been requested by some of those Parishes who currently employ their own warden and will give incentive and greater freedom of choice to those who may want to in the future.
3. When the original designation order was made by the Council in 1998 under the Dogs (Fouling of Land Act) 1996 a few Parish Councils declined the offer to include their land at the time. The proposed DCO will provide them with the opportunity to review this position.
4. Recommendation 3 will standardise the issuing of fixed penalty notices by Street Wardens and any other Council authorised officers. Fixed penalty notices for both littering and dog control offences will be under one piece of legislation and the amount of the penalty will be at the same level, i.e. £80 with a discounted sum of £50 for early payment within 10 days of receipt.

If Cabinet endorse the proposals then a due procedure must be followed before the proposed DCO's can be implemented.

- The Council must consult upon its proposal to make an order with Parish/Town Councils and the County Council and publish a notice describing the proposals in a local newspaper(s).
- Representations about the proposals can be made for a period of not less than 28 days after the publication of the notice.
- The final details of a proposed DCO must be published in a local newspaper at least seven days before it is to come into force, published on the Council's

website and where practicable by notices placed in or near the land to which it is to apply.

DCO's can be made by either District or Parish /Town Councils (so called secondary authorities) although those made by the District override those made by the parishes. It should also be noted that, whilst CNEA 2005 has repealed the DFLA 1996, any dog fouling designation orders made prior to April 2006 under the 1996 Act continue to have effect indefinitely. Therefore enforcement of the existing designation order, through fixed penalty notices and prosecution can continue as normal until such time as a new DCO is made.

As part of the consultation with Parish/Town Councils we intend to advise them of the existing controls and what is available under the new provisions and we propose to invite those Parishes whose land was excluded from the original designation order to have their land included in the new DCO.

We also propose to provide advice to them to ensure that secondary authorities are in a position to be able to make and enforce other dog control orders i.e. dogs on leads, dogs on lead by direction, dogs exclusion and dogs (specified maximum) on their land if they wish, without prejudicing the ability to control dog fouling via the blanket designation on the same land.

#### Constitutional Amendments

When Cabinet agreed to the implementation of street management functions under the Clean Neighbourhoods and Environment Act 2005 the delegations made to the Director of Leisure and Environment included a delegation to issue dog control orders. This delegation is no longer required as it is more appropriate that this function is undertaken by the Director of Housing and Health. It is therefore recommended that the delegation to the Director of Leisure and Environment is removed from the constitution and that the Director of Housing and Health is given delegated authority to make dog control orders.

The Director of Leisure and Environment has delegated authority to issue fixed penalty notices in respect of control on dogs. However staff in the Housing and Health Directorate will also undertake this function. It is therefore appropriate that the Director of Housing and Health should have similar delegated authority to issue fixed penalty notices under the Clean Neighbourhoods and Environment Act 2005. The existing delegation under the Council section of the delegations within the constitution is not appropriate as it relates to environmental health functions which are Council functions, whereas under the new legislation the dog control functions fit within the remit of the executive. Approval to delete the references to dog control from the Council section of the delegations will be sought as part of the review of the constitution to be undertaken later in the year.

#### Financial implications

Enforcement of the DCO's will be undertaken by the Councils dog warden and where appropriate by Street Wardens. Parish Councils will also have the freedom to employ their own wardens. There will be no additional costs. Experience has shown us that the visual presence of the wardens is an effective deterrent in preventing

offences of the nature covered by the proposed DCO's. We do not therefore expect a significant income from offences against the DCO's.

The requirement to place notices advising the existence of the DCO on relevant land is necessary "where practicable". It is envisaged that the present signage distributed throughout the borough can be gradually overlayed with self adhesive signs and that new metal signs will also be positioned on a rolling programme. The current budget of £1500 for the dog fouling signage is considered adequate.

#### Risk management

Risk Identified	Likelihood	Impact	Risk Management Actions Planned
Consultation identifies a need for a significant revision of the current controls	Medium	Low	Cost and impact to be considered through a further Cabinet report

Key Decision: No

Background Papers: Dog Control Orders

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## **APPENDIX A**

### **THE DOGS (FOULING OF LAND) ACT 1996**

### **CHARNWOOD (NO. 1) DESIGNATION ORDER**

The Council of the Borough of Charnwood (in this order called “the council”) hereby make the following order:

1 The land described in the Schedule below being land in the area of the council which is land to which the Dogs (Fouling of Land) Act 1996 applies, is hereby designated for the purposes of that Act.

2 The Order may be cited as the CHARNWOOD (NO 1) DESIGNATION ORDER 1998 and shall come into force on 3 September 1998

**SCHEDULE**  
**LAND DESIGNATED BY DESCRIPTION**

1 All carriageways within the Borough of Charnwood with a speed limit of 40 miles per hour or less and all footways, footpaths and verges running alongside them.

2 All footpaths, bridleways, cyclepaths, pedestrianised areas and all other pedestrianised ways within the Borough of Charnwood which are open to the air on at least one side and to which the public is entitled or permitted to have access, with or without payment.

3 All parks, recreation grounds, open spaces, wooded open spaces, playing fields, grassed areas, graveyards, cemeteries and car parks within the Borough of Charnwood, and under the management or control of Charnwood Borough Council or Leicestershire County Council and to which the public is entitled or permitted to have access, with or without payment.

4 All parks, recreation grounds, open spaces, playing fields, grassed areas, graveyards and cemeteries within the Borough of Charnwood and under the management or control of any one of the following: Anstey, Barrow-upon-Soar, Birstall, East Goscote, Hathern, Hoton, Mountsorrel, Quorndon, Rearsby, Rothley, Sileby, South Croxton, Thurgarton & Cropston, Thurmaston and Woodhouse Parish Councils and Shepshed and Syston Town Councils, and to which the public is entitled or permitted to have access, with or without payment.

IN WITNESS whereof the  
COMMON SEAL of the COUNCIL  
OF THE BOROUGH OF CHARNWOOD  
was hereunto affixed this  
4<sup>th</sup> day of August 1998  
in the presence of:-

Geoffrey Henshall  
Director of Corporatenvironmental Services

**APPENDIX B**

### **DOG BAN AREAS ( LOUGHBOROUGH)**

Rendell Street Play Area

Kirkstone Drive Play Area

Manor Drive Play Area

Southfields Park Play Area, Leicester Road

Holt Drive Play Area

Braddon Road, Barsby Drive Play Area

Garendon Green Play Area

Old Ashby Road Play Area

Derby Road Play Area

Gorse Covert Play Area

Meadow Avenue Play Area

Queens Park Play Area

Great Central Road Play Area

Jubilee Park Play Area

Burder Street Play Area

Ling Road Play Area

Cumberland Road Play Area

Radmoor Road Play Area

Stapleford Park Play Area

Moat Farm Play Area

Braddon Road Play Area

### **DOGS ON LEADS AREAS**

Lakeside Development Kelcey Road, Quorn

### **DOGS ON LEADS BY DIRECTION AREAS**

Linear Walk, Loughborough

Booth Wood, Loughborough

Charnwood Water, Loughborough