

AREA COMMITTEE EAST (ACE) (Dales, Mapperley, St Ann's) – 9th September 2014

Title of paper:	DOG CONTROL ORDERS	
Director(s)/ Corporate Director(s):	Andrew Errington Director Community Protection	Wards affected: DALES WARD
Report author(s) and contact details:	Abu Belim Principal Enforcement Officer City South Community Protection St Anns Police Station St Anns Well Road St Anns Nottingham NG3 3HR abu.belim@nottinghamshire.pnn.police.uk	
Other colleagues who have provided input:	Tamazin Wilson, SOLICITOR – Legal Services Tamazin.wilson@nottinghamcity.gov.uk 0115 8764417	

Relevant Council Plan Strategic Priority:

Cutting unemployment by a quarter	<input type="checkbox"/>
Cut crime and anti-social behaviour	<input checked="" type="checkbox"/>
Ensure more school leavers get a job, training or further education than any other City	<input type="checkbox"/>
Your neighbourhood as clean as the City Centre	<input checked="" type="checkbox"/>
Help keep your energy bills down	<input type="checkbox"/>
Good access to public transport	<input type="checkbox"/>
Nottingham has a good mix of housing	<input type="checkbox"/>
Nottingham is a good place to do business, invest and create jobs	<input type="checkbox"/>
Nottingham offers a wide range of leisure activities, parks and sporting events	<input type="checkbox"/>
Support early intervention activities	<input type="checkbox"/>
Deliver effective, value for money services to our citizens	<input type="checkbox"/>

Summary of issues (including benefits to citizens/service users):

Over the past few years the Council and the Police have received many complaints in respect of dogs causing nuisance and annoyance to members of the public by being allowed to run loose across the urban parts of the Dales Ward. Many irresponsible dog owners do not keep their dogs on leads allowing them to roam free without being under any control. There have been serious attacks by dogs which have not been on a lead and have not been properly controlled by their owners. These matters and the results of the consultation were reported to the Area Committee and on the 13th May 2014 the Area Committee East Dales, St Anns and Mapperley authorised the Director of Legal and Democratic Services and the Legal Services Manager to make the following Dog Control Orders:-

- 1) The Dales Ward Urban Areas Dogs on Leads Order
- 2) The Dales Ward Urban Areas Dogs Fouling of Land Order

These Orders have now been made and came into force on 3rd July 2014.

Prior to the implementation of these Orders, representations were made to Councillors regarding the areas known as the Greens Windmill and Greens Gardens, situated to the north west of the Urban area described in the above orders (referred to as “the Greens Windmill” throughout this report). The representations included concerns relating to the requirement for dogs to be on leads

at all times within this small section of land due to it being a regular exercise area for dog owners who wished to maintain this section of land as an area where they could freely exercise their dogs off the leads. As such, this small section of land was excluded from the Dales Ward Urban Areas Dogs on Leads Order and further consultation was authorised by the Area Committee on 13th May 2014 and undertaken to obtain the views of the local citizens in relation to this particular section of land.

A sub group for the Area Committee was authorised by the full Area Committee in May 2014 and formed in order to consider the results of the consultation relating to this particular section of land.

This report confirms the outcome of the decision made by the sub group for the Area Committee following the consideration of the results of the consultation. This report also confirms the results of additional consultations that were authorised by the Director of Community Protection in relation to two further proposed Dog Control Orders: 1) proposing that dogs be excluded from play ground areas within the Dales Ward and 2) proposing that a 'Dogs on Leads by Direction' Dog Control Order be made over the Colwick Country Park, Colwick Woods and the Greens Windmill and outlines the recommendations made following those consultations.

Recommendation(s):

- (1) The Area Committee note the decision made on 27th August 2014 by the sub group to the Area Committee in relation to the area known as the Greens Windmill to authorise the Director of Legal and Democratic Services and the Legal Services Manager to make a 'Dogs on Leads at all times' Dog Control Order requiring dogs to be kept on a lead of not more than 60 inches in length over the land outlined with a bold red line on the attached plan at Appendix 6.
- (2) The Area Committee note the evidence gathered and the results of the consultation on the proposal to introduce the Dog Control Orders detailed below for the Dales Ward.
- (3) The Area Committee authorise the Director of Legal and Democratic Services and the Legal Services Manager to make the following Dog Control Orders:
 - (i) **A 'Dogs on Leads by Direction Dog Control Order', which would make it an offence to not put, and keep, a dog on a lead when directed to do so by an authorised Officer over Colwick Country Park and Colwick Woods the land outlined with a bold red line on the attached plan at Appendix 1.**
 - (ii) **A 'Dogs Exclusion Order', which would make it an offence to permit a dog to enter land from which dogs are excluded over the land outlined with a bold red line on the attached plan at Appendix 2.**
- (4) In the event that a decision is made to make the Dog Control Orders under recommendation (3) above, the Area Committee authorise the Director of Community Protection to carry out the necessary advertisements and arrange for appropriate signs to be erected in accordance with the legislative requirements.
- (5) In the event that a decision is made to make the Dog Control Orders under Recommendation (3) above, the Area Committee set the Fixed Penalty amount for offences committed contrary to the Dog Control Orders at £80.
- (6) The Area Committee authorise the Director of Community Protection to carry out the necessary advertisements and arrange for appropriate signs to be erected in accordance with the legislative requirements for the Dog Control Order noted at Recommendation (1) above.

(7) The Area Committee set the Fixed Penalty amount for offences committed contrary to the Dog Control Order at recommendation (1) above at £80.

1. REASONS FOR RECOMMENDATIONS

1.1 The Clean Neighbourhoods and Environment Act 2005 gives the local authority the power to introduce a Dog Control Order which can be applied to any land which is open to the air and which the public has access to, with or without payment.

1.2 On 4th July 2014 Delegated Authority was given by the Director of Community Protection to consult on the potential introduction of two Dog Control Orders for the Dales Ward namely:

(i) A 'Dogs on Leads by Direction Order' which would make it an offence not to put, and keep, a dog on a lead when directed to do so by an authorised Officer over Colwick Country Park, Colwick Woods and the Greens Windmill.

(ii) A 'Dogs Exclusion Order', which would make it an offence to permit a dog to enter land from which dogs are excluded over the land outlined with a bold red line on the attached plan at Appendix 2.

1.3 Currently there are no requirements for dog owners to keep their pets on leads on Colwick Woods, Colwick Woods Country Park and the Greens Windmill. The sub group for the Area Committee met on 27th August 2014 and decided that the Greens Windmill should not be covered by A 'Dogs on Leads by Direction' Order which would only give a power to an authorised officer on occasions when it is deemed that dogs are out of control and pose a possible danger to other park users. The sub committee decided that it was more appropriate to have a 'Dogs on leads at all times' order within the Greens Windmill. **The plan attached to this report at Appendix 1 has therefore been amended to that which was consulted upon to remove the Greens Windmill from the proposed 'Dogs on Leads by Direction' Order at recommendation (3)(i) of this Report.**

1.4 The City Council's Parks Service often receives complaints from users of Colwick Country Park about the behaviour of dogs on the park disturbing wildlife, fishermen and conflicts with vehicles. These matters were set out in the Delegated Authority Report that was authorised and signed off by the Director of Community Protection. In relation to children's playgrounds currently dog owners are allowed to take their dogs on all the playgrounds across the Dales Ward. Due to the risk of children being attacked by dogs whilst playing on children's playgrounds and parks the Council believe that a Dog Control Order is necessary. These matters were also set out in the Delegated Authority Report that was authorised and signed off by the Director of Community Protection. A copy of the Delegated Authority is attached at Appendix 5.

1.5 The penalty for committing an offence contained in a Dog Control Order is a maximum fine of level 3 on the standard scale (currently £1,000) although the opportunity to pay a fixed penalty may be offered instead. The proposed Dog Control Orders are not intended to interfere with responsible dog owners who keep their pets under proper control and clean up after them. This approach will allow the targeting of individuals acting irresponsibly in the control of their dog(s) while leaving others undisturbed who are not causing a problem.

1.6 The proposed Dog Control Orders should only be made where the Council is satisfied that to do so would be a necessary and proportionate response to problems caused by

the activities of dogs and those in charge of them. The Council is of the opinion that the proposed Dog Control Orders at paragraph (3)(i) and (ii) of the Recommendations above are necessary and proportionate for the reasons set out in paragraph 1.3 and 1.4 above and after consideration of the matters outlined in Section 2 of this Report (Background (Including Outcomes of Consultation)). It is therefore recommended that the Area Committee authorise the Director of Legal and Democratic Services and the Legal Services Manager to make the two Dog Control Orders detailed in paragraphs (3)(i) and (ii) of the Recommendations above. Area Committee are also asked to note the authorisation to make the Dog Control Order in relation to the Greens Windmill requiring dogs to be kept on leads at all times detailed at paragraph (1) of the Recommendations.

2. BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)

- 2.1 Over the past few years, the Council and the Police have received many complaints in respect of dogs causing nuisance and annoyance to members of the public by being allowed to run loose across the Dales Ward, and in particular the urban parts of the Dales Ward. Many irresponsible dog owners do not keep their dogs on leads. There have been a number of serious attacks by dogs who have not been on a lead and have not been properly controlled by their owners. During the consultation process that took place in relation to the two Dog Control Orders mentioned in the summary above, it has been brought to the Council's attention that there have been problems with dogs being out of control on Colwick Country Park and concerns in relation to dogs being allowed on a number of children's play areas within the Dales Ward.
- 2.2 Consultation over the proposal to introduce Dog Control Orders detailed above on the land in question was carried out by placing a Notice in the Topper Newspaper on 9th July 2014 describing the proposed Orders and giving the opportunity to make representations about the proposal, and a copy of the Notice was placed on the Council's Community Protection Website from 9th July 2014 until 6th August 2014. The Neighbourhood Development Officer and members of Neighbourhood Action Team have consulted groups that they work with regarding the proposed Orders. Community Protection have consulted our partners Nottingham City Homes, Nottinghamshire Police and a number of Housing Associations. Community Protection Officers engaged with citizens across the Dales ward explaining the proposals and asking for their views in consultation questionnaires and obtaining the signatures of citizens who support these proposals. The manager for Parks and Open Spaces at the Council has also been consulted. Nottingham Police have been consulted and the Neighbourhood Police Inspector for the Dales Ward has stated that he supports these proposals.
- 2.3 The sub group for the Area Committee met on 27th August 2014 to consider the evidence gathered and the results of the consultation on the proposal to introduce a further Dog Control Order specifically in relation to the area of land known as the Greens Windmill. A copy of the sub group report is available upon request during the Area Committee meeting of the 9th September 2014. The sub group for the Area Committee decided that it is more necessary and proportionate to introduce a Dog Control Order requiring dogs to be kept on a lead at all times within the Greens Windmill complex and therefore the recommendations are that the Area Committee authorise the Director of Legal and Democratic Services and the Legal Services Manager to authorise the making of an Order requiring dogs to be kept on leads at all times when on the Greens Windmill. Area Committee is asked to note this decision at paragraph (1) of the Recommendations.

Outcomes

- 2.4 As a result of evidence collated during the Consultation there appears to be support for both of the proposed Dog Control Orders detailed in Recommendations (3) (i) and (ii) above.
- 2.5 A total of 471 completed questionnaires have been received from citizens across the Dales Ward. Of the questionnaire results, Question 2 asked “Currently there is no requirement for a dog to be on a lead in certain areas of land within the Dales Ward. Would you support a Dog Control Order that allows uniformed Officers to direct owners of dogs to put their pets on a lead if the Dogs are judged to be out of control on the following areas of land? Colwick Wood, Colwick Country Park and the Greens Windmill/ Gardens? A total of 465 responses stated ‘yes’ with only ‘5’ stating no. Question 3 asked “Would you support a Dog Control Order that excludes / prohibits Dogs from the following Children’s playgrounds Lees Hill, Greens Windmill, Parkdale Road, Colwick Woods and Colwick Country Park within the Dales Ward? A total of 438 stated ‘yes’ with a total of 27 stating ‘no’ It is unclear as to why a small percentage of citizens would not support the prohibition of dogs from children’s playgrounds as no further explanation is given in the questionnaires however due to health and safety issues, and these areas being small, clearly defined and clearly fenced off areas of land onto which dogs could not accidentally enter, it is considered reasonable and proportionate for them to be excluded from these areas shown on the plan at Appendix 2.
- 2.6 An analysis of the questionnaire responses is attached at **Appendix 3**
- 2.7 A petition with 553 signatures in support of the proposed Dog Control Orders has been collated by Community Protection Officers from citizens across the Dales Ward.
- 2.8 In the event that a decision is made to make the Dog Control Orders referred within the Recommendations at paragraphs (3) (i) and (3) (ii) above it is recommended the Area Committee agree to set the Fixed Penalty amount for offences committed contrary to these Dog Control Orders at £80 and the Dog Control Order referred to at Recommendation (1) above as this is in line with the current amount for fixed penalties for offences contrary to the Dog Control Orders that came into force in the Dales Ward on 3rd July 2014.

3. OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

- 3.1 The City Council has byelaws regarding Colwick Park, which were made under the Countryside Act 1968, which, to my knowledge, have not been repealed to date. One of these byelaws relates to dogs:
- 3.2 “No person shall cause or suffer a dog belonging to him or in his charge to enter or remain on the Park unless such a dog be and continue to be under proper control and be effectually restrained from causing annoyance to any person or from worrying or disturbing any animal”.
- 3.3 Breach of the above byelaw is a criminal offence. Currently no fixed penalty is available for breach of this Byelaw, but the power to issue fixed penalties for breach of byelaw may be available in the future if relevant Regulations are made under the Local Government and Public Involvement in Health Act 2007.

- 3.4 Guidance issued by the Department for Environment Food and Rural Affairs ('Government Guidance') states that existing byelaws remain in force indefinitely, and can continue to be enforced as normal. However, if an Authority makes a Dog Control Order in respect of an offence on a specified area of land, any byelaw made by a primary or secondary authority dealing with the *same* offence on the *same* land lapses. As stated above, a byelaw is currently available, but will lapse if the Dog Control Order proposed at paragraph (3)(i) of the Recommendations is made.
- 3.5 There are no enforcement powers for an authorised Officer such as Community Protection Officers to direct owners to put their dogs on leads if their pet is deemed to be out of control on Colwick Woods. Currently there are no restrictions to prevent dog owners taking their dog(s) on to children's playgrounds across the Dales Ward.
- 3.6 The RSPCA and Dog Wardens may be able to offer some assistance in some circumstances when issues arise with dogs being out of control, however this would be reactive action and would not tackle the wider problem of dogs being allowed to roam free and foul the land. There are currently limited resources available to the RSPCA and Dog Wardens in tackling this issue and the introduction of Dog Control Orders will provide better tools and powers to a wider Enforcement Team in dealing with these problems.
- 3.7 Civil action against individual owners including civil tools and powers to tackle these problems are available in the forms of Anti-Social Behaviour Orders, however, these are cumbersome and difficult to implement due to the legislative requirements and time frames. The use of a Dog Control Order provides additional powers and remedies which can be used alongside or as an alternative to civil action and which will be considerably quicker and more effective.

4. FINANCIAL IMPLICATIONS (INCLUDING VALUE FOR MONEY/VAT)

- 4.1 Once the Dog Control Orders have been approved and the required signage erected, there will be no ongoing financial implications. The costs of enforcing the Orders will be met within the existing roles of the Community Protection Officers and the Dog Wardens.
- 4.2 The cost of the signage and advertisement in accordance with the legal requirements will be taken from Community Protection's Budget.

5. RISK MANAGEMENT ISSUES (INCLUDING LEGAL IMPLICATIONS AND CRIME AND DISORDER ACT IMPLICATIONS)

Legal Implications

- 5.1 Government Guidance indicates that before an authority makes a Dog Control Order it should consider whether the order is necessary and proportionate. In reaching a conclusion, Committee should consider the results of the consultation (including the number of consultation responses), the existing powers which the Council has, and the proposals for enforcement. The Guidance states that the Council should consider how easy a Dog Control Order would be to enforce, since failure to properly enforce the Order could undermine the effect of the Order.
- 5.2 The Guidance indicates that the Committee should balance the interests of those in charge of dogs against the interests of those affected by the activities of dogs bearing in mind the need for people to have access to dog-free areas and areas where dogs are kept under strict control and the need for those in charge of dogs to have access

to areas where they can exercise their dogs without due restrictions. Failure to properly consider these matters could result in any subsequent Dog Control Order being vulnerable to challenge.

- 5.3 The Guidance also confirms that if, after considering representations on a proposal to make an order an authority decides to significantly amend its proposal, it must start the procedure again, publishing a new notice describing the amended proposal.
- 5.4 Dog Control Orders can be made by the City Council under the Clean Neighbourhoods and Environment Act 2005 in respect of any land which is open to the air and to which the public are entitled or permitted to have access (with or without payment). However, in relation to the proposed "Dogs Exclusion Order", it should be noted that the Schedule in the Controls on Dogs (Non-application to Designated Land) Order 2009 confirms that a "Dog Exclusion Order" cannot be made in relation to land which is or forms part of a road (as defined in section 142 of the Road Traffic Regulation Act 1984).
- 5.5 Should the Area Committee decide to authorise the making of the proposed Dog Control Orders referred to in this report the legal requirements contained in the Clean Neighbourhoods and Environment Act 2005 and Dog Control Orders (Procedures) Regulations 2006 and other Regulations made under the Clean Neighbourhoods and Environment Act 2005 will need to be followed. The Council will need to place signs summarising the Orders in conspicuous positions on or near the land in respect of which they applies, and publish a further Notice in a local newspaper circulating in the area in which the land in respect of which the orders apply.
- 5.6 The Anti-social Behaviour, Crime and Policing Act 2014 ('the 2014 Act'), which received Royal Assent on 13 March 2014, will repeal Dog Control Orders, which will be replaced by 'Public Spaces Protection Orders'. Section 75 of the 2014 Act confirms that a Dog Control Order made before the Commencement date of 20th October 2014 Act will not be affected by the repeal provisions, and will remain in force for a period of three years beginning with the commencement date of the 2014 Act, after which, if still in force, the provisions of the Orders will have effect as if provisions of the new Public Spaces Protection Orders contained in the 2014 Act.

General

- 5.7 The enforcement agencies would use these powers fairly and proportionately. Those affected will have recourse through the courts in the normal way.

6. EQUALITY IMPACT ASSESSMENT

- 6.1 An Equality Impact Assessment has been carried out and a copy is attached as Appendix 4. The introduction of the Dog Control Orders will not adversely affect any particular group of citizens.
- 6.2 Exemptions are available to Dog Control Orders to some sections of the disabled Community.
- 6.3 The Orders would not apply where a person in control of a dog has:-
 - a. a reasonable excuse for failing to comply with an Order or
 - b. Is acting with the consent of the owner or occupier of the

land, or any other person or authority which has control of the land, for example dogs working on the land with the consent of the land owner.

There is also an exemption from the dog exclusion offence for people with disabilities in respect of trained assistance dogs.

- 6.4 Under the Council's Fair and Just Nottingham Equity Scheme, these proposed Dog Control Orders comply with the underlying principles of the scheme and promotes fair and individual enforcement based on the Orders.

7. LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION

- 7.1 Consultation responses which include questionnaires completed by citizens and a Petition signed by citizens who support these proposals.

8. PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT

- 8.1 Crime and Disorder Act (1998)
- 8.2 Clean Neighbourhoods and Environment Act (2005)
- 8.3 Environmental Protection Act (1990)
- 8.4 Anti-social Behaviour, Crime and Policing Act 2014
- 8.5 Guidance on Sections 55 to 67 of the Clean Neighbourhoods and Environment Act 2005 produced by DEFRA 2006.
- 8.6 Dog Control Orders (Prescribed Offences and Penalties, etc) Regulations 2006
- 8.7 Dog Control Orders (Procedures) Regulations 2006
- 8.8 Controls on Dogs (Non-application to Designated Land) Order 2009
- 8.9 Environmental Offences (Fixed Penalties)(Miscellaneous Provisions) Regulations 2007