

**AREA COMMITTEE EAST (ACE) (DALES, MAPPERLEY, ST ANN'S) – 13 MAY 2014**

<b>Title of paper:</b>	<b>DOG CONTROL ORDER</b>	
<b>Director(s)/ Corporate Director(s):</b>	Andrew Errington Director Community Protection	<b>Wards affected: DALES WARD</b>
<b>Report author(s) and contact details:</b>	<b>Abu Belim</b> <b>Principal Enforcement Officer</b> <b>City South Community Protection</b> <b>St Anns Police Station</b> <b>St Anns Well Road</b> <b>St Anns</b> <b>Nottingham</b> <b>NG3 3HR</b>  <a href="mailto:abu.belim@nottinghamshire.pnn.police.uk">abu.belim@nottinghamshire.pnn.police.uk</a>	
<b>Other colleagues who have provided input:</b>	Tamazin Wilson – Legal Services	
<b>Relevant Council Plan Strategic Priority:</b>		
World Class Nottingham		
Work in Nottingham		
Safer Nottingham		<b>X</b>
Neighbourhood Nottingham		<b>X</b>
Family Nottingham		<b>X</b>
Healthy Nottingham		<b>X</b>
Leading Nottingham		
<b>Summary of issues (including benefits to citizens/service users):</b>		
<p>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 in particular. Many irresponsible dog owners do not keep their dogs on leads. There have been serious attacks by dogs who have not been on a lead and have not been properly controlled by their owners.</p> <p>It is proposed that a Dog Control Order be made requiring that those in charge of a dog must keep their dog on a lead over the land outlined in red on the attached Plan Dog Control Order 1 at Appendix 1. This would benefit the community in respect of taking positive enforcement actions against those people who allow their animals to roam around without adequate supervision.</p> <p>Where such Orders are made the provisions of the Dogs (Fouling of Land) Act 1996 automatically lapse in respect of that land and therefore it is also proposed that a further Dog Control Order be made to re-instate the offence of failing to remove dog faeces from land covered by the Dog Control Order. It is proposed that the Dog Control Order in respect of dog fouling will apply to the whole of the Dales Ward as outlined in red on the attached Plan Dog Control Order 2 at Appendix 2 rather than the same land that the proposed Dog Control Order requiring dogs to be kept on leads will apply to because dog fouling is a problem across the whole of the Dales Ward.</p> <p>Due to the number of reported cases of dog fouling and complaints regarding dogs being allowed to roam freely without being properly controlled these issues have been Ward priorities for in excess of two years.</p>		

The use of powers granted to the authorised personnel under a Dog Control Order is an effective way to ensure a proportionate approach is taken to dealing with these problems.

### **Recommendation(s):**

(1) The Area Committee note the evidence gathered and the results of the consultation on the proposal to introduce Dog Control Orders for the Dales Ward.

(2) That Area Committee authorise the Director of Legal and Democratic Services and the Legal Services Manager to make the following Dog Control Orders:

(a) A Dog Control Order requiring the removal of dog faeces from the land outlined with a bold red line on the attached Plan Dog Control Order 2 at Appendix 2

(b) A 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 Dog Control Order 1 at Appendix 1

as indicated in the draft Orders in Appendices 4 and 5 of this report.

(3) In the event that a decision is made to make the Dog Control Orders under recommendation (2) above, the Area Committee authorise the Director of Community Protection to carry out the necessary advertisements and arrange for appropriate signage to be erected in accordance with the legislative requirements.

(4) In the event that a decision is made to make the Dog Control Orders under recommendation (2) above, the Area Committee set the Fixed Penalty amount for offences committed contrary to the Dog Control Orders at £80.

## **1. BACKGROUND**

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, with or without payment.

1.2 A report was presented to this Area Committee at its meeting on Tuesday 11th February 2014 regarding proposed Dog Control Orders for the Dales Ward, and Delegated Authority was subsequently obtained from the Corporate Director of Communities to consult on the potential introduction of two Dog Control Orders for the Dale Ward , namely:

(a) A Dog Control Order requiring the removal of dog faeces over land outlined with a bold red line on the attached Plan Dog Control Order 2 (at Appendix 2)

(b) A 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 Dog Control Order 1 (at Appendix 1)

A copy of the Delegated Authority is attached at Appendix 3.

- 1.3 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.
- 1.4 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.
- 1.5 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 proposed Orders are considered a necessary and proportionate response due to the number of reported cases of dog fouling across the whole of the Dales Ward and the cases where residents have been injured by dogs not on their leads. Responsible dog owners will still be able to exercise their dogs off their leads on Colwick Woods Country Park which is within the Dales Ward as long as the dog remains under control.
- 1.6 The land in question has been the subject of concern for local residents because of a number of dog-related issues, mostly in respect of dogs being allowed to roam freely in the Dales Ward without adequate control measures in place. This has included dogs being taken for walks by members of the public who have not ensured their dog(s) is/are on a lead which has resulted in the dog(s) being allowed to intimidate other animals and members of the public. It was felt that Dog Control Orders could help by giving enforcers additional powers to tackle these problems.

## **2. REASONS FOR RECOMMENDATIONS (INCLUDING OUTCOMES OF CONSULTATION)**

- 2.1.1 Consultation over the proposal to introduce Dog Control Orders detailed in paragraph 1.2 above on the land in question was carried out by placing a Notice in the Topper Newspaper on 12<sup>TH</sup> March 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 12<sup>th</sup> March until 16<sup>th</sup> April 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 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 Head of Service for Parks and Open Spaces at the Council has also been consulted. Colleagues in our Parks and Open Spaces have provided comments that are set out in the outcomes section below.

### **Outcomes**

- 2.2 As a result of evidence collated during the Consultation there appears to be support for the proposed Dog Control Orders.
- 2.3 The Council has only received one written response to the Notice in the Topper and on the Council's Website. This will be made available for Councillors to view prior to Area Committee, and was in support of the proposed Orders.

- 2.4 Councillor Mellon has received some representations regarding the proposed Orders and one of the issues raised was that the green area within the Windmill Lane Complex is the only location in that part of the Dales Ward where residents can currently exercise their dogs off lead. A further Plan has been prepared for the urban parts of the Dales Ward which excludes the green area within the Windmill Lane Complex, which is attached at Appendix 6. If the Area Committee would like to use this amended plan for the proposed Dog Control Order referred to at paragraph 1.2(b) above this would be a change to the area of land which was consulted over. The Council would need to consult again if a significant change to the original consultation is proposed.
- 2.5 A total of 221 completed consultation questionnaires have been received to date, which will be made available for Councillors to view prior to Area Committee and an analysis of the responses is attached at Appendix 7. Of the questionnaire responses:
- 2.5.1 219 responded that they agreed with the proposed removal of dog faeces Dog Control Order detailed at paragraph 1.2(a) above. One did not express any view regarding this proposal, and one disagreed with the proposal, but did not give any reason why.
- 2.5.2 198 responded that they agreed with the proposed dogs to be kept on leads of 60 inches or less Dog Control Order detailed at paragraph 1.2(b) above. Thirteen did not express any view regarding this proposal, and ten disagreed with this proposal. Of the ten who disagreed, one commented that “there are many well trained dogs and they feel it would be a little unfair”, one stated that it depends on the size of the dog, and the rest did not give any further detail why they disagreed with the proposal.
- 2.5.3 The consultation questionnaire asked for any view on how long a dog lead should be, 60 inches, 70 inches or 80 inches. 143 responded 60 inches, 17 responded 70 inches and 18 responded 80 inches. One response was received that the lead should be no longer than 36 inches as this will give more control over the dog, one said that [the length of lead] depends on the size of the dog.
- 2.5.4 Although not forming part of the formal consultation, the questionnaire asked a general question whether or not people would support a Dog Control Order to allow officers to put a dog on a lead if dogs are judged to be out of control. 207 responded that they would support this, and 5 did not. The reasons given for not supporting such an Order were that dogs should already be on a lead.
- 2.5.5 Although not forming part of the formal consultation, the questionnaire also asked a general question whether or not people would support a Dog Control Order which would exclude dogs from certain areas of land including children’s playgrounds and parks, school playing fields, athletic/sports fields, BMX tracks and bowling greens. 204 responded that they would support such an Order, 7 said that they would not.
- 2.6 A petition with 365 signatures in support of the proposed Dog Control Orders has been collated and will be made available for viewing prior to Area Committee.
- 2.7 In addition to the above, James Dymond, Parks & Open Spaces Development Manager for the Council has made representations requesting that the Area Committee gives consideration to the following:

- 2.7.1 Due to ongoing issues with dog behaviour at Colwick Country Park, the Parks and Open Spaces Service would like the site to also be covered by the proposed Dogs on Leads Order.
- 2.7.2 Due to the variety of users / uses of the site, he says that requiring dogs to be 'under control' is not sufficient due to the risks of their behaviour at this site – e.g. disturbing wildlife / wildfowl, conflict with vehicles are able to move around large areas of the site and fishermen often get disturbed by dogs off leads.
- 2.7.3 That 'Dog Free Zones' Dog Control Orders be considered. He states that the Parks Service would support a number of totally Dog Free Zones as part of the proposals – such as smaller children's play areas where dogs simply aren't suitable, however the location and further details of these are not included He states that the 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. He states that in 2013, it was reported that a dog was killed on the park after a fight with another dog.
- 2.7.4 He states that Dog mess is frequently reported to the Parks Service at both Colwick Woods and Colwick Country Park
- 2.8 The Council has not formally consulted on a Dog Control Order requiring that dogs be kept on leads in Colwick Country Park and Woods or 'Dog free Zones'. The proposed Dog Control Order which has been consulted upon at paragraph 1.2(b) only covers the urban areas of the Dales Ward, and specifically excluded Colwick Country Park and Woods. The proposals in paragraph 2.7 above are significantly different to the Dog Control Orders which have been consulted upon, and the Council would need to undertake a further consultation before making such Orders.
- 2.9 Further work will now be undertaken to establish whether it is appropriate to make further Orders to deal with the above and, if it is considered appropriate to take such action, approval to undertake formal consultation will be sought.
- 2.10 No other objections or comments regarding the proposed Dog Control Orders at paragraphs 1.2(a) and (b) of the Report have been received.
- 2.11 Should the length of the lead not be specified in the proposed Dog Control Order requiring dogs to be kept on a lead, this would allow for irresponsible dog walkers to potentially allow their dogs enough lead length to attack other animals / people and would not support the aims of making of this Order. It is recommended that the length of lead should be specified as 60 inches. The requirement to keep dogs on a lead of 60 inches would only apply over the land covered by this Dog Control Order, and not to surrounding land. In addition, defences are available to an offence under such an Order, namely that the person has a reasonable excuse for failing to keep the dog on a lead of 60 inches or less, or the owner, occupier or other person or authority having control of the land has consented to this. Authorised officers would have discretion when enforcing any such Order, and training will be given. There are currently no enforcement powers for Community Protection Officers to require that dogs are kept on leads and this would be an additional power.
- 2.12 In the event that a decision is made to make Dog Control Orders it is recommended the Area Committee agree to set the Fixed Penalty amount for

offences committed contrary to the Dog Control Orders at £80. The fixed penalty for the Dogs (Fouling of Land) Act 1996 offence of failing to remove dog faeces forthwith is currently £50. In addition, for the two existing areas covered by Dog Control Orders in part of Bestwood and the Lenton Abbey Estate, the fixed penalty for breach of such Orders is £50, which was in line with the rest of the City. The reason for this recommendation for a £80 fixed penalty is that the Dales Ward is one of the worst wards in the city for dog fouling not being cleared up by owners, and it is hoped that this higher penalty would serve as deterrent to irresponsible dog owners.

- 2.12 All supporting evidence will be available from Constitutional Services between 9am and 5pm by contacting Rav Kalsi on 0115 8763759.

### **3. OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS**

- 3.1 Consideration has been given to the existence of the Dog (Fouling of Land) Act 1996 which is currently an effective tool for tackling dog fouling. However this does not cover wider dog issues such as the ability to require that dogs be kept on leads.
- 3.2 There are currently no enforcement powers for Community Protection Officers to require that dogs be kept on leads and this would be an additional power.
- 3.2 It should be noted that no complaints of dog owners behaving in an irresponsible manner in the Dales Ward have been received since the consultation period commenced. However, there have been no formal objections to the proposed Dog Control Orders, and only a very small number of negative responses to the Council's Questionnaire regarding the proposed Dog Control Orders, mainly relating to the length of lead allowed referred to in paragraph 2.5.2 and 2.5.3 above.
- 3.3 The RSPCA and Dog Wardens may be able to offer some assistance in some circumstances, 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.
- 3.4 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'. However, a date for when the relevant provisions of 2014 Act will brought into force has not yet been confirmed, and the Home Office have indicated that this will not be before the Autumn of 2014. Section 75 of the 2014 Act confirms that a Dog Control Order made before the commencement date of the 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. As we do not have a firm commencement date for the 2014 Act, the provisions of the Public Spaces Protection Orders have not been considered in detail in this Report.
- 3.5 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, this is 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)**

- 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 Order will be met within the existing roles of the Community Protection Officers and the Dog Wardens.
- 4.2.1 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, CRIME AND DISORDER ACT IMPLICATIONS AND EQUALITY AND DIVERSITY IMPLICATIONS)**

##### Legal Implications

- 5.1 Area Committee is referred to the legal advice attached to the Delegated Decision Form at Appendix 3 of this Report.
- 5.2 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 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. Some of the boundaries on the plans to be attached to the proposed Dog Control Orders at Appendices 1,2 and 6 appear to cut part way through roads for example, which may make it confusing for members of the public in these areas to know where such Orders apply.
- 5.3 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.
- 5.4 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.
- 5.5 Should the Area Committee decide to authorise the making of the proposed Dog Control Orders referred to in this Report in paragraphs 1.2(a) and (b), 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.

### Fixed Penalty Amount

- 5.6 The Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007 confirm that the amount of fixed penalties for breach of Dog Control Orders can be set between a minimum of £50 and a maximum of £80, and that the level of the penalty is a matter for the individual Council to decide.

### 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 ASSESSMENTS (EIAs)**

- 6.1 An Equality Impact Assessment has been carried out and a copy is attached as Appendix 8. The introduction of the two 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 fouling 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 complies 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 Record of complaints
- 7.2 Consultation responses

## **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 Dogs (Fouling of Land) Act 1996
- 8.5 Anti-social Behaviour, Crime and Policing Act 2014
- 8.6 Guidance on Sections 55 to 67 of the Clean Neighbourhoods and Environment Act 2005 produced by DEFRA 2006.
- 8.7 Dog Control Orders (Prescribed Offences and Penalties, etc) Regulations 2006
- 8.8 Dog Control Orders (Procedures) Regulations 2006
- 8.9 Controls on Dogs (Non-application to Designated Land) Order 2009
- 8.10 Environmental Offences (Fixed Penalties)(Miscellaneous Provisions) Regulations 2007