

2 November 2011

REPORT OF THE PORTFOLIO HOLDER FOR ENVIRONMENT & WASTE MANAGEMENT**PROPOSAL FOR THE INTRODUCTION OF DOG CONTROL ORDERS****EXEMPT INFORMATION**

No

RECOMMENDATIONS

Members are asked to:

- Endorse the report and approve the appropriate consultation of the Dog Control Orders identified
- Approve Appendix DC01 outlining the suggested areas for each order
- Authorise a further report being presented to Full Council during April 2012 for consideration of adoption of the orders.

PURPOSE

To seek approval to commence the process for the introduction of dog control orders in Tamworth

RESOURCE IMPLICATIONS

There are no additional financial implications, as all costs will be met from existing budgetary provision, however they can be broken down to include the following area's

- Officer time to progress orders
- Internal Legal Services for advice
- Advertising costs
- Signage
- Enforcement – it is proposed that the enforcement will be delegated to existing officers and Street Wardens in the first instance. Enforcement will be done in the course of regular patrols and targeted hot spot areas identified

LEGAL/RISK IMPLICATIONS BACKGROUND

All legal implication is covered by the report

SUSTAINABILITY IMPLICATIONS

None

CONCLUSIONS

The Council has, for many years, had byelaws in place for the control of dogs, and also has provision under the Public Health Act, Housing Act, and Open Spaces Act to make dog free areas. All cemeteries are also defined as “dogs on leads only” areas under a provision of the local government act.

However, due to the fact that enforcement under this existing legislation and byelaws is only available by formal prosecution they are no longer considered to be fit for the purpose they were introduced for, as formal prosecution is both costly and time consuming for all involved.

The Clean Neighbourhoods and Environment Act 2005 allows Councils to consolidate all these byelaws and existing legislation to enforce all major dog control issues by way of fixed penalty notices, rather than expensive and often time-consuming prosecutions. This provides a clear and visible immediate action for the public when an offence is witnessed and fully compliant with the existing Environmental Crime Enforcement Policy.

Regulation for offences relating to dog fouling in Tamworth currently fall under Section 3 of the Dog Fouling of Land Act 1996 and it is an offence not to clean up after a dog on designated land. For the purpose of the 1996 Act, all land in Tamworth is designated with the co-operation of landowners and includes canal tow paths. The current penalty is £50, however formalisation of the dog fouling order under the Clean Neighbourhoods and Environment Act 2005 will bring this legislation up to date and in line with littering offence penalties of £80.

By adopting powers under Section 55 of the Clean Neighbourhoods and Environment Act 2005, all the above dog control offences can be controlled by Dog Control Orders and will provide a more structured and coherent approach to dealing with dog nuisance issues across the Borough.

It is proposed the Council adopt the following orders:

- fouling of land by dogs and removal of dog faeces (“the dog fouling order”);
- the keeping of dogs on leads (the “dogs on lead order”);
- not putting, and keeping, a dog on the lead when directed to so by an authorised officer (“the keeping a dog under control when directed to do so order”) and;
- the exclusion of dogs from land (“the exclusion of dogs order”);

The “dog fouling order” is broadly similar to the current provisions for dog fouling, however the new proposal will include all land open to the air, where the current provisions have certain land exemptions e.g. common land and land used for agriculture.

The “keeping of dogs on leads order” on any land is designed to keep dogs under closer control in urban areas and to discourage persons allowing dogs to stray and foul in specific locations. Under the Road Traffic Act 1988, it is already an offence for a person to cause or permit a dog to be on a public footway or grass verge adjacent to a road without its being on a lead. Specific areas are listed under Appendix DC01

The “keeping of dogs under control when directed to do so order” is designed for those circumstances when a dog is considered to be out of control or causing concern and an instruction by an authorised officer will help to rectify the situation.

The “exclusion of dogs order” is designed to create dog free areas that can be enforced, specifically to combat the problem of dog fouling within play areas. Specific locations are listed under Appendix DC01 and include any enclosed area in which children play. (This order does not include playing fields adjacent to the enclosure, just the enclosed area or marked area itself) although the other orders will apply outside of this.

Consultation

It is proposed that initial consultation will take place from 30 November 2011 to the end of January 2012, followed by statutory consultation in February and March 2012.

The initial consultation period is to highlight the issues involved as well as gather opinions from residents, visitors and organisations on the proposed scheme. Views from the initial consultation period will be considered when drafting the Dog Control Orders for the statutory consultation. A list of specific consultation groups has been included in appendix DC02.

Residents and visitors will have the opportunity to have their say on the proposals by visiting a display at Marmion House or via a questionnaire on the website. A dog control orders e-mail and web-page will be set up for the consultation process.

Education

Street Wardens will be conducting an anti dog fouling campaign from October 2011 and work with local groups and schools to produce a dog fouling poster and participate in the Keep Britain Tidy Love Where You Live campaign.

Leaflets on dog fouling and the implication of dog control orders will also be widely available.

Enforcement of the Dog Control Orders

It is not proposed to increase the level of enforcement the Council currently delivers, but it is proposed all enforcement Staff will receive delegated authority to operate the new powers.

BACKGROUND INFORMATION

Over the years, various Bye Laws have been made to control dogs. Currently the Council only has powers to issue fixed penalty for dog fouling. Other byelaws in place have proved cumbersome and difficult to enforce, with no power of fixed penalty.

Feedback from residents has consistently raised the issue of dog fouling, and requests for service to deal with dogs are a high volume area. Given the level of feedback received it is essential that a clear framework of regulation in place to tackle dog related issues and allow a more proportional response to dealing with dog related enforcement matters.

The introduction of dog control orders seek to:

- Balance the needs of those in charge of dogs against the interests of those affected by dogs, bearing in mind the need for people, in particular children to have access to dog free areas and areas where dogs are kept under strict control.
- Promote the Council's approach for creating a cleaner and sustainable environment.
- Reduce the potential health implications associated with dog faeces.
- Promote responsible dog ownership
- Reduce complaints for dog faeces.
- Allow the public and especially children access to dog free or dog controlled areas intended for recreational purposes
- Reduce and tackle issues relating to dogs running loose and causing nuisance to others

- Improve health and well-being through access to dog free areas and areas where dogs are kept under strict control
- Ensures that the Council's legislative powers are fully up to date with current environmental legislation

Dog fouling offences are not applicable to certain working dogs, guide dogs and designated assistance dogs.

Section 55 of the Act enables local authorities to make Orders that apply to offences aimed at the control of dogs to specified land in their area Section 57 of the Act provides that Orders may apply to all public land which is open to the air and which the public are entitled or permitted to have access (with or without payment). There are exemptions to this definition which have been made by the Secretary of State under the 'The Control of Dogs (Non-application to Designated Land) (England) Order 2006, which exempts Forestry Commission Land in respect of all Orders, and roads (including highways) in respect of Orders excluding dogs from land.

A road is defined in Section 142 of the Road Traffic Regulations Act 1984 as (in England and Wales) 'any length of highway or any other road to which the public has access, and includes bridges over which a road passes.' This definition includes public rights of way, including footpaths, and ways to which the public have access by permission of the landowner rather than by right, such as on private estates.

The introduction of this order will revoke the current Dogs Fouling of Land Regulations (1996) and bring the penalty level into line with the current litter legislation.

Section 59 of the Act allows authorised officers of the local authority or any other person authorised in writing by the authority (such as a Police Community Support Officer with the Police Authority's consent) to issue a fixed penalty notice offering members of the public an opportunity to discharge any liability for offences under the Dog Control Order.

Section 60 enables a local authority to specify the amount of fixed penalty in relation to their own Dog Control Orders. (The fine range is £50 - £80 and is specified by the Fixed Penalty (Miscellaneous Provisions) Regulations 2006.

The current agreed rate for Tamworth is £80 (reduced to £50 for payment within 7 days.)

The penalty to be provided in relation to any offence under a Dog Control Order is, on summary conviction, a fine not exceeding level 3 on the standard scale (currently £1,000).

The Dog Control Orders (Procedures) Regulations 2006 set out how Dog Control Orders shall be introduced by local authorities. Before making a Dog Control Order the authority shall:

- (a) consult upon its proposals to make an order by publishing a notice of the proposal in a local newspaper circulating in the area in which the Order would apply is situated
- (b) Where all or part of the land in respect of which the proposed order would apply is access land then we are required to consult with the Access Authority for that land (for example British Waterways)The Notice referred to in (a) above shall:

- identify the land that is access Land, summarise the order,
- state where any maps identifying the land can be viewed,

- state the period in which representations shall be made which should not be less than 28 days,
- state the address/e-mail where representations shall be made.

Example public consultation is attached as Appendix DC03

At least seven days before any Dog Control Order comes into force, the Council shall:

- (a) where practicable place signs summarising the Order in conspicuous positions on or near land where the Order applies;
- (b) publish in a local newspaper in the area where the Order applies a notice that the order has been made and stating the place where it may be inspected or copies obtained;
- (c) Make available the information on the Councils website.
- (d) Send copies of the information to the Access Authority identified above

REPORT AUTHOR

Jo Sands

LIST OF BACKGROUND PAPERS

Clean Neighbourhoods and Environment Act 2005

Tamworth Borough Council Environmental Crime Enforcement Policy 2010

Dog Control Orders (Prescribed Offences and Penalties, etc) Regulations 2006

Dog Control Orders (Guidance on Sections 55 to 67 of the Clean Neighbourhoods and Environment Act 2005) DEFRA 2006

Fixed Penalty (Miscellaneous Provisions) Regulations 2006

Local Environmental Enforcement (Guidance on the use of fixed penalty notices) DEFRA 2007

Dog Fouling and the Law (A Guide for the Public) ENCAMS 2006

APPENDICES

DC01 – Suggested areas for each dog control order

DC02 – suggested initial groups of consultees November 2011 to January 2012

DC03 – Example formal consultation advert

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