

REPORT TO: Safer Halton Policy & Performance Board

DATE: 23 January 2006

REPORTING OFFICER: Strategic Director Environment

SUBJECT: Section 57 of the Clean Neighbourhoods and Environment Act 2005 dog control orders

WARDS: Boroughwide

1.0 PURPOSE OF THE REPORT

- 1.1 The Clean Neighbourhoods and Environment Act 2005 brought in new powers for local authorities to deal with dog-related issues. These powers enable local authorities to deal with the minority of irresponsible dog owners and will replace existing legislation if adopted
- 1.3 The powers are adoptive and this report is brought to the board at the request of the chair to allow the board to consider the merits and implications of adopting these powers and where in the borough would be appropriate to apply them.

2.0 RECOMMENDATION: That

- (1) the Board note and consider the report; and**
- (2) the Board undertakes an overview examination of the merits and implications for the Council of adopting these new powers with a view to making recommendations.**

3.0 SUPPORTING INFORMATION

- 3.1 The Act presents an opportunity to provide a range of controls that could improve the effectiveness of environmental enforcement. The controls relating to dogs are important because in addition to the risks of environmental damage and public nuisance, there are significant public health risks associated with dog fouling for example through Toxocara Canis infection that can cause illness in humans including the risk of damage to eye-sight. These risks have to be balanced against the rights of dog owners and the benefits that can arise from responsible dog ownership.
- 3.2 From 6 April 2006, a Dog Control Order can be made under Section 57 of the Clean Neighbourhoods and Environment Act 2005 in respect of:
- Any land which is open to the air, and
 - To which the public have access (with or without payment).
- 3.3 Land is "open to the air" if it is open to the air on at least one side. It, therefore applies to any covered place with a significant permanent opening on at least one side, such as a bus shelter or garage forecourt that remains open to the air at all times. This is the same as the position under the provisions on litter.

- 3.4 Local authorities that designated any of their land under the Dogs (Fouling of Land) 1996 before 6 April 2006 can continue to enforce the 1996 Act indefinitely, or until a Dog Control Order is made in respect of the same land. For example, if a District council designated the whole District under the 1996 Act, but then made a dog control order in respect of its parks, this means the 1996 legislation would no longer have effect in the parks but would continue to have effect throughout the rest of the District.
- 3.5 The Dog Control Orders (Prescribed Offences and Penalties etc) Regulations provide for 5 offences, which may be prescribed in a dog control order
- a) failing to remove dog faeces; dog
 - 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.
- 3.6 The penalty for committing an offence contained in a Dog Control Order is a maximum fine on level 3 of the standard scale (currently £1,000). Alternatively, the opportunity to pay a fixed penalty may be offered in place of prosecution.
- 3.7 It is a requirement, where a Dog Control Order is made, that signs should be placed summarising the Order on land to which the new order applies, thereby informing the public that the land is subject to an order.
- 3.8 The Dog Control Orders (Procedures) Regulations 2006 require that, before it can make a Dog Control Order, an authority must consult any other primary or secondary authority within the area in which the order is being made. In England, parish councils constitute secondary authorities.
- 3.9 Authorities must also publish a notice describing the proposed order in a local newspaper circulating in the same area as the land to which the order would apply, and invite representations on the proposal. The notice must:
- a) identify the land to which the Order will apply and, (if this is the case), state that it is open access land under the Countryside and Rights of Way Act 2000
 - b) summarise the order ;
 - c) if the order will 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 at all reasonable hours during the consultation period;
 - d) give the address to which, and the date by which, representations must be sent to the authority. The final date for representations must be at least 28 days after the publication of the notice.
- 3.10 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, it must decide when the order will come into force. This must be at least 14 days from the date upon which it was made.
- 3.11 Once an order has been made, the authority must, at least 7 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 applies stating;

- a) that the order has been made; and
 - b) where the order may be inspected and copies obtained
- 3.12 Where practicable a copy of the notice must also be published on the authority's web site. Also, where the order affects open access land, the authority should send a copy of the notice to the access authority, the local access forum and the Countryside Agency.
- 3.13 Finally, if an authority decides significantly to amend its proposal after considering representations, it must start the procedure again, publishing a new notice describing the amended proposal.
- 3.14 Essential factors for consideration coming out of guidance are:
- 3.14.1 It is important for any authority considering a Dog Control Order to be able to show that this is a necessary and proportionate response to problems caused by the activities of dogs and those in charge of them.
 - 3.14.2 The authority also needs to 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, in particular children, 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 undue restrictions.
 - 3.14.3 Authorities should consider how easy a Dog Control Order would be to enforce, since failure properly to enforce could undermine the effect of an order. This is particularly the case for orders that exclude dogs completely from areas of land
 - 3.14.4 Although ignorance, or lack of facilities to remove faeces, will not be a defence, the Regulation 3(4)(a) of the Dog Control Orders (Procedures) Regulations states that, where practicable, signs must be put up in conspicuous positions on or near the land in respect of which it applies summarising the Order. Methods the Board may wish to consider and recommend include: installing high visibility temporary signs put up on highways, approaches to schools, near parks during periods of enforcement and replacement of current permanent signage.
 - 3.14.5 The nature, content and extent of the required consultation exercise.
 - 3.14.6 The need for community engagement and targeted education and publicity programmes to complement any enforcement regime

4.0 POLICY IMPLICATIONS

- 4.1 Effective and proportionate regulation is a best value consideration (BVPI-166). There is already an environmental health enforcement policy, which includes the control of dogs.

5.0 OTHER IMPLICATIONS

- 5.1 Enforcement can be accommodated from existing resources.
- 5.2 There will be an additional cost for the consultation procedure.
- 5.3 There will be a considerable financial cost of updating and replacing all existing signage. For a blanket boroughwide application of orders the cost of replacing existing signs as well as installing some additional ones together with an effective publicity campaign could be in the region of £8.000-£10.000.
- 5.4 If dog exclusion areas are to be created in recreation areas there will be a new financial cost of fencing, gating and maintaining these. The cost can only be estimated when the overview is complete and the extent of these areas agreed.

6.0 RISK ANALYSIS

- 6.1 This is an opportunity to clarify and consolidate into a single unified enforcement power the various regulatory powers around responsible dog ownership.
- 6.2 It carries a risk of alienating sections of the community particularly dog owners if not sensitively applied.

7.0 EQUALITY AND DIVERSITY ISSUES

- 7.1 The environmental and regulatory services department in exercising its regulatory services aim to be consistent and even handed in all regards and as such the service does not apply differently to any particular group. Even though the services are not intended to have either a positive or negative impact but as a service dealing directly with the whole cross section of the community in a regulatory capacity there is always scope for a group or individuals to perceive to be affected differently.

8.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

| Document | Place of Inspection | Contact Officer |
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| Clean Neighbourhoods Guidance on the Environmental Protection Act 1990, Clean Neighbourhoods and Environment Act 2005 and Related Legislation. Published by the Department for Environment and Rural Affairs (DEFRA) | Environmental Health Division Rutland House Halton Lea, Runcorn WA7 2GW (Further information can be found on the DEFRA website www.defra.gov.uk) | Mrs W.K. Salisbury Environmental Protection Manager |