

<b>5 February 2013</b>		<b>ITEM 5</b>
<b>Cleaner, Greener, Safer Overview and Scrutiny Committee</b>		
<b>Dog Control Orders</b>		
Report of: Cllr A. Gaywood		
<b>Wards and communities affected:</b> Borough Wide	<b>Key Decision:</b> Yes	
<b>Accountable Head of Service:</b> Gavin Dennett, Head of Service Public Protection		
<b>Accountable Director:</b> Jo Olsson, Director of People Services		
<b>This report is</b> Public		
<b>Purpose of Report:</b> To provide Members of the Overview and Scrutiny Committee with an update on the investigation into the use of Dog Control.		

### **EXECUTIVE SUMMARY**

In response to concerns from Members and residents, the introduction of Dog Control Orders in Thurrock has been explored to see if they offer an appropriate and proportionate solution to these concerns. Members have emphasised throughout this process the need to maintain a balanced approach to this issue by also exploring opportunities for dog-friendly areas as well as areas from which dog would be excluded.

The introduction of Dog Exclusion Orders for toddlers play areas, including fencing off those areas which are currently open, is widely supported and recommended in this report. Further work is needed to explore the introduction of dog-friendly areas and consult further with local residents on possible locations.

#### **1. RECOMMENDATIONS:**

- 1.1 That Members note the outcome of the public consultation and approves further work to deliver appropriate measures to meet the views expressed in the consultation.**
- 1.2 That Dog Exclusion Orders are obtained for relevant toddler play areas which are the responsibility of the Council.**
- 1.3 That fencing should be installed in all play areas for which this is appropriate.**

**1.4 That further work is undertaken to explore the feasibility of dog-friendly areas and possible locations.**

**2. INTRODUCTION AND BACKGROUND:**

2.1 The Clean Neighbourhoods and Environment Act, 2005, gives local authorities the power to introduce Dog Control Orders where they are considered to be a necessary and proportionate response to problems caused by the activities of dogs and those in charge of them. These can be introduced to deal with the following in designated areas;

- Dog fouling
- Keeping dogs on leads
- Excluding dogs
- Limiting the number of dogs under control of one person

2.2 Thurrock Council already has a borough-wide Order in relation to dog fouling.

2.3 The views of residents and relevant national bodies have been sought in relation to the other three options, through a comprehensive consultation process, the results of which are attached at Appendix "A".

2.4 The key points are that 48% of respondents felt that there was a problem with dogs in the area in which they live and 96% supported the banning of dogs from fenced toddler areas; a view supported by the Kennel Club and the Dogs Trust in their responses to the consultation. The creation of dog friendly areas was also widely supported with 76% of respondents agreeing with this proposal. Some locations were suggested, however, more detailed consultation and research will be required if this is to be taken forward.

**3. ISSUES:**

3.1 The Council has responsibility for a number of toddler play areas of which are already fenced. Of the remaining ten, it is suggested by officers in the Environment Department that two are unsuitable for fencing. These are at Dilkes Park and at High House Production Park at Purfleet. At Dilkes Park the play area is spread out amongst trees and is felt to be difficult to define as an area. At High House Production Park any fencing would need to be agreed with the High House production park trustees.

3.2 The remaining eight, which seem more suitable for fencing, are at;

- Aveley Recreation Ground
- Chafford Hundred
- Corringham Town Park
- Delafield
- Fobbing Recreation Ground
- Orsett Recreation Ground
- St Francis Way, and
- Usk Road

- 3.3 There has been some more general concern that the installation of fencing might compromise the way in which these areas have been designed over recent years. The more modern play areas have been designed to enable natural progression onto equipment for older children, which would be disrupted by fencing toddler areas.
- 3.4 However, it has been estimated that the cost of fencing these eight locations, if this was agreed, together with the necessary signage and advertising etc would be about £80,000.
- 3.5 Any steps to implement Dog Control Orders must comply with the Dog Control Orders (Procedures) Regulations, 2006, which stipulate the need for notices in local media setting out the areas to be covered and seeking responses within a period of 28 days.
- 3.6 It should be noted that the draft Anti-Social Behaviour Bill, which is due to be announced in the Queen's Speech in May, 2013, is expected to enfold the power to make Dog Control Orders within the new Public Spaces Protection Orders. This will put a time limit of three years on any Orders. It is understood that any Orders in place will carry forward for a further three years after the Bill is enacted. It is not thought that this presents any reason why the implementation of Dog Control Orders could not be continued.
- 3.7 The enforcement of these Orders would rest with the Community Protection Team, who would be able to ask owners to comply with the Orders or risk receiving a Fixed Penalty Notice.
- 3.8 If Members do wish to introduce Dog Control Orders, in order to maintain a balanced approach, it has been suggested that there would be an obligation to implement dog-friendly areas as well. In its submission the Kennel Club referred to the need to enable owners to meet their legal responsibilities under the Animal Welfare Act, 2007, for their dogs to be exercised freely. Possible locations which were identified in the consultation include Daisy Fields, Anchor Field and the Rookery, Little Thurrock.
- 3.9 Members may also wish, in line with arrangements commonly seen elsewhere, to direct that any Orders to exclude dogs from specific locations should not apply to sensory or assistance dogs.

#### **4. CONSULTATION (including Overview and Scrutiny, if applicable)**

- 4.1 Consultation has been undertaken through an online questionnaire on the Council's website and with paper copies available at the Civic Offices, libraries, housing offices and police stations. They were also handed out by representatives of the Dogs Trust at the most recent Meet the People event organised by the Community Safety Partnership, in Tilbury. The consultation period ran from 29.10.12 to 10.12.12 and received 92 responses, 58 of which were online and 34 paper questionnaires were completed. A response was also received from a

couple from West London who visit Thurrock and had seen the questionnaire on the website.

- 4.2 The community forums were contacted with the offer for officers to attend to explain the proposals, although none requested such an input.
- 4.3 The Kennel Club and Dogs Trust were both written to and invited to respond. Both sent comprehensive replies. The key points being the need for a balanced, proportionate response, providing dog-friendly areas as well as fencing off toddler play areas, which both supported, provided there was an evidenced local problem with dogs.

## 5. **IMPACT ON CORPORATE POLICIES, PRIORITIES, PERFORMANCE AND COMMUNITY IMPACT**

- 5.1 As well as meeting the Council's statutory obligations, the arrangements now in place also address the its Priorities in relation to helping to build pride, respect and responsibility to create safer communities and to protect and promote our clean and green environment.

## 6. **IMPLICATIONS**

### 6.1 **Financial**

Implications verified by: **to be confirmed**  
Telephone and email:

### 6.2 **Legal**

Implications verified by: **David Lawson**  
Telephone and email: **01375 652087**  
[David.lawson@bdtlegal.org.uk](mailto:David.lawson@bdtlegal.org.uk)

Part 6 of the Clean Neighbourhoods and Environment Act 2005 ('the 2005 Act') provides local authorities with the discretionary power to make orders known as 'dog control orders' in relation to the following: (a) fouling of land by dogs and the removal of dog faeces; (b) the keeping of dogs on leads; (c) the exclusion of dogs from land; and (d) the number of dogs which a person may take onto any land.

Section 57 of the 2005 Act prescribes the land to which dog control order may apply, being any land which is open to the air (including covered land which is open to the air on at least one side) and to which the public are entitled or permitted to have access (with or without payment). Secondary legislation (the Control of Dogs (Non-application to Designated Land) Order 2009) that the powers to make dog control orders do not apply (i) to land that is placed at the disposal of the Forestry Commissioners under section 39(1) of the Forestry

Act 1967; and (ii) in so far as they relate to the exclusion of dogs from land, land which is or forms part of a road.

The form of words which must be used in relation to dog control orders is prescribed within the Dog Control Orders (Prescribed Offences and Penalties, etc.) Regulations 2006 ('the 2006 Regulations'), including orders relating to the offences of: (i) the fouling of land by dogs; (ii) not keeping a dog on a lead; (iii) not putting and keeping a dog on a lead under direction; (iv) permitting a dog to enter land from which it is excluded; and (v) taking more than a specified number of dogs onto land. The 2006 Regulations also prescribe that the penalty in relation to these offences is, on summary conviction, a fine not exceeding level 3 on the standard scale (i.e. £1,000).

The procedure for making a dog control order is set out within the Dog Control Orders (Procedure) Regulations 2006 ('the Procedure Regulations') and includes the publication of notice of the proposals in a local newspaper with a minimum twenty-eight day period within which representations in relation to the proposals may be made.

If following consideration of any consultation responses received, a local authority determines to make a dog control order, it is required by virtue of the Procedure Regulations, not less than seven days before the order comes into force to: (a) where practicable, place signs summarising the order in conspicuous positions on or near the land in respect of which it applies; (b) publish a notice relating to the making of the order in a local newspaper and on the Council's website; and (c) send information about the making of the order to any the relevant secondary authority (i.e. the Town Council). The 2006 Regulations additionally provide that a dog control order may not come into force before the period of fourteen days from the date on which the order was made.

Section 59 of the 2005 Act makes provision for the issue, by an authorised officer, of a fixed penalty notice as an alternative to prosecution for an offence within a dog control order. The statutory default level of fixed penalty notice is £75, however the local authority may determine the level, subject to the limitations within the Environmental Offences (Fixed Penalty Notices) (Miscellaneous Provisions) Regulations 2007 ('the 2007 Regulations'). The 2007 Regulations state that the amount of a fixed penalty notice must not be less than £50 and not more than £80 and any lesser amount for payment within a prescribed period must not be less than £50. It is suggested that the level of fine set should be proportionate and reasonable given the nature of the offence in question.

If the land in question is covered by a designation made under the Dogs (Fouling of Land) Act 1996 ('the 1996 Act'). Whilst the 1996 Act was repealed by the 2005 Act, offences under the 1996 Act were preserved. However, if any type of dog control order is made that applies to land already designated under the 1996 Act, the 1996 Act ceases to have effect in respect of the land subject to the dog control order.

Any byelaw which prohibited a person in charge of dog from allowing the dog to foul a footway or grass verge under subsection 64(4) of the 2005 Act, if an authority makes a dog control order in respect of an offence on a specified area of land, any byelaw dealing the same offence on that same area of land lapses.

### 6.3 **Diversity and Equality**

Implications verified by: Samson DeAlyn  
Telephone and email: 01375652472  
sdealyn@thurrock.gov.uk

The recommendations in this report, if implemented, would not adversely affect any particular sections of our law-abiding communities.

### 6.4 **Other implications (where significant) – i.e. Section 17, Risk Assessment, Health Impact Assessment, Sustainability, IT, Environmental**

This scheme supports the Council's commitment to delivering on section 17 of the Crime and Disorder Act.

## 7. **CONCLUSION**

7.1 Those who responded to the consultation have expressed an overwhelming wish for toddler areas to be fenced off, although the evidence for other measures which may also be suitable is not yet as clear. It is suggested that further research will be needed to confirm the suitability of fencing in those locations yet without it.

### **BACKGROUND PAPERS USED IN PREPARING THIS REPORT:**

The guidance for local authorities from DEFRA on Dog Control Orders can be located with the following link:

<http://archive.defra.gov.uk/environment/quality/local/legislation/cnea/documents/dogcontrol-orders.pdf>

### **APPENDICES TO THIS REPORT:**

None.

### **Report Author Contact Details:**

**Name:** James Nicolson, Community Protection Manager  
**Telephone:** 01375 652972  
**E-mail:** jnicolson@thurrock.gov.uk

