

Report of : Director of Environment and Neighbourhoods

Report to : Executive Board

Date: 14th December 2011

Subject: Dog Control Orders – Phase 2

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

In November 2010 Executive Board approved Dog Control Orders for the Leeds district. These orders required dogs to be placed on a lead whenever directed to do so by an authorised officer, excluded dogs from specified land (largely fenced off children’s play areas) and limited the number of dogs that could be walked at any one time by one person to 6.

Following strong representations from Scrutiny and in consultation with the Executive Member, an officer delegated decision later reduced that limit to 4. It was also agreed that an enforcement policy would be drafted which allowed the walking of 5 or 6 dogs by professional and responsible dog walking businesses without enforcement action being taken so long as the dogs remained fully under the control of the walker.

This report proposes that a Dog Control Order be made requiring a dog to be kept on a lead at all times on all carriageways and adjacent footpaths and grass verges and in cemeteries and crematoria. It further proposes that the dog exclusion order be amended to include other land designated for a specific purpose, such as remembrance and wildlife gardens and school grounds, where the schools have indicated the wish to have such an order.

It also proposes an enforcement policy relating to the walking of more than four dogs for Executive Board approval.

Recommendations

1. That Executive Board:

- 1.1. approve the making of a Dog Control Order requiring that on certain specified land dogs should be on a lead at all times on all carriageways and adjacent footpaths and grass verges within the Leeds City Council district and in cemeteries and crematoria.
- 1.2. approve amendments to the previous Dogs On Leads by Direction Order and the Dog Exclusion Order to:
 - ensure that the Dogs on Leads by Direction Order applies wherever the new Dogs On Leads at All Times Order does not; and
 - to update the list of prescribed areas to include other land designated for a specific purpose such as remembrance and wildlife gardens and school grounds where the schools have indicated the wish to have such an order.
- 1.3. approve the enforcement policy in relation to the walking of more than four dogs at one time.
- 1.4. agree the process for future review and consultation on the schedules of land within the Orders.

1 Purpose of this report

- 1.1 This report considers the outcome of consultation on changes to the dog control orders for Leeds and seeks approval to implement further specified powers under the Clean Neighbourhoods and Environment Act 2005 with effect from 1 January 2012. The report also seeks to approval for an enforcement policy in relation to the walking of more than four dogs at one time.

2 Background information

- 2.1 During 2008/2009, Environment and Neighbourhoods Scrutiny Board conducted a review of dog fouling enforcement. The board issued a statement in February 2009 setting out its conclusions and recommendations. One of the recommendations stipulated exploring the use of additional Dog Control Orders in the city.
- 2.2 A multi-agency Project Board was set up in 2009 to consider the options for adopting Dog Control Orders and to develop an action plan for progressing the Orders. The Board was constituted from representatives of Environmental Services, Legal Services, Parks and Countryside, Education Leeds, and the Strategic Landlord and West North West Homes Leeds (on behalf of the ALMOs).
- 2.3 The Project Board timetabled the project for delivery via a two stage process to facilitate early delivery of some aspects of the project. Phase 1 of the project was approved by Executive Board in November 2010. This report relates to Phase 2 of the project.

2.4 Dog Control Orders are available under Section 55(1) of the Clean Neighbourhoods & Environment Act 2005, which states:

“A primary or secondary authority may in accordance with this Chapter make an order providing for an offence or offences relating to the control of dogs in respect of any land in its area to which this Chapter applies.”

Leeds City Council is a primary authority for this purpose.

2.5 Dog Control Orders apply to any land which is open to the air and to which the public are entitled or permitted to have access (with or without payment).

2.6 Phase 1 of the project agreed the implementation of four Dog Control Orders covering:

- The enforcement of dog fouling;
- The exclusion of dogs from certain specified land;
- A requirement for dogs to be placed on a lead when the person in control of it is directed to do so by an authorised officer; and
- The restriction of the maximum number of dogs that may be walked by any one person to 4.

2.7 Currently, where a person is found committing an offence of failing to comply with a dog control order they could be issued with a fixed penalty notice as an opportunity to discharge liability for the offence. If they fail to pay the fixed penalty, the Council will proceed to prosecute for the offence. Such an offence carries a maximum fine of up to £1000. The fixed penalty charge is £75, which is discounted to £50 for early payment. In the majority of circumstances, the fixed penalty will always be offered as a first option. Whilst there is no appeal against an FPN, the Services does receive and respond to written enquiries as if they were appeals.

2.8 In making a decision on whether and how to enforce the Council has adopted the principles of the Enforcement Concordat which require the enforcement activity to be consistent but to be proportionate to the risks of the activity in question. In any decision to prosecute the council also applies a two stage test similar to that used by the Crown prosecution Service. There must be reasonable prospects of success based upon the evidence provided and it must be in the public interest to prosecute.

2.9 The enforcement of these orders is carried out by staff that are trained and authorised appropriately by the council. Whilst there are only six Dog Wardens currently enforcing the existing Orders, approximately 50 environmental enforcement staff within Environmental Services will be trained to enforce the new and existing powers in January. The council will also work with other council services to further expand authorisation to other officers such as Parks and Countryside staff. We will also look to negotiate with other external partner agencies to support the enforcement of the orders, for example by PCSOs and ALMO staff.

3 Proposals

- 3.1 Phase 2 of the project seeks to make a new Order stating that, on certain specified land, dogs should be on a lead at all times. It is proposed that this Order be applied to all carriageways and adjacent footpaths and grass verges within the Leeds City Council district and will ensure that any dog is kept under control at all times and doesn't run unexpectedly into a road causing traffic accidents or injury to the dog itself. It is also proposed that this Order be applied to cemeteries and crematoria to avoid disturbance to graves and lawned areas from roaming dogs whilst retaining access to dogs visiting graves under the control of their owners.
- 3.2 It is also proposed that the existing Order relating to dogs being required to be put on a lead as directed would be amended so that it applies to all land in the Leeds district not covered by the new Order. These proposals include land which is access land.
- 3.3 In addition the council proposes that the existing Dog Exclusion Order should be amended to add other land designated for a specific purposes such as remembrance and wildlife gardens where a dog may cause damage and disturbance to the area even when under close control. The council also proposes to include areas such as school grounds where it might not be possible to keep a dog under close control due to likely distractions which may endanger young and vulnerable people. The existing list of children's play areas has also been updated. A full list of all of these areas can be found at Appendix A.
- 3.4 Prior to introducing or amending any Dog Control Orders, the council must undertake a minimum 6 week consultation process and to advertise its intentions in the local media. The Council published its intention in the Yorkshire Post on 12 August 2011. To facilitate the consultation process Environmental Services developed a website (www.leeds.gov.uk/dogs) which contains information on the proposals and an online survey for responses to the consultation. Hard copies of the survey have also been distributed upon request. The consultation ran for 8 weeks to allow for as many responses as possible to be received.
- 3.5 In addition to the media all Elected Members, Parish and Town Councils, British Waterways, The Dogs Trust, The Kennel Club and the RSPCA were all contacted directly about the proposals. A wide range of council partners including housing ALMOs and housing associations were also contacted directly.
- 3.6 All Leeds schools have also been contacted in relation to the specific order in relation to exclusion from school grounds and asked to send the proposals to the Chair of their Governing Body and also the Chair of their PTA. Where schools have responded to ask that their grounds are included as part of the Exclusion Order we have included them in the revised schedule.

3.7 Consultation results

- 3.7.1 In total 372 responses to the consultation were received. 7 responses have been received from Collingham with Linton, Alwoodley, Otley, Barwick in Elmet, Aberford, Pool, Thorp Arch, Boston Spa Town and Parish Councils.

3.7.2 The following questions were asked in the consultation questionnaire and the response, in percentages, are listed alongside:

Consultation Question	% Responses In Agreement
Do you agree that the new children's play areas be added to the dog exclusion schedule?	85%
Do you agree that remembrance and wildlife gardens be added to the exclusion zone schedule?	74%
Do you agree that school grounds be added to the exclusion zone schedule?	85%
Do you agree that dogs should be kept on a lead at all times on roads, adjacent footpaths and adjacent grass verges?	75%
Do you agree that dogs should be kept on a lead at all times in cemeteries and crematoria?	90%

3.7.3 Whilst the level of responses to the consultation has not been as high as at Phase 1, we are pleased that the consultation has resulted in a good spread of responses from all wards and from residents with and without dogs. Around 53% of respondents were dog owners compared to the Phase 1 consultation where over 70% of respondents owned dogs.

3.7.4 As with the previous Phase 1 consultation the majority of respondents are in agreement with Dog Exclusion Orders on the extended list of specified areas such as new play areas, remembrance and wildlife gardens and school grounds (on an opt-in basis).

3.7.5 The majority of respondents (75%) also agree that the Order should be amended to include a requirement for dogs to be kept on leads at all times on roads and adjacent footpaths. An even greater majority (90%) agree that dogs should be kept on a lead at all times in cemeteries and crematoria.

3.7.6 Whilst there is large-scale support for the proposals as they stand it is clear from the consultation and recommendations from Scrutiny Board that a degree of common sense should be applied to enforcing the dogs on leads Order.

3.7.7 Several respondents asked that sites additional to those on the schedule were included in the orders. Where no further consultation is required to add these to the schedule, e.g. that they are clearly delineated play areas, these have been added to the schedule. If consultation is required, it is not possible for us to include these at present. We will however keep these on file until the next review of the schedules (see 3.8 below).

3.7.8 Scrutiny Board also asked the council to consider whether the Dogs on Leads at all Times Order could be extended to include areas of green space used by schools that have no on-site green space in order to help with dog fouling enforcement. Given that the current consultation process solely referred to the use of the Dogs on Leads at all Times Order to deal with public safety issues, a further consultation

would be necessary to gauge the level of public support for the extension of these powers to deal with dog fouling. We are not therefore recommending that such sites are included in this current extension of sites covered. However we will assess whether such powers could be used and if appropriate include this proposal in the next review of powers as per 3.8 below.

3.8 Future Review Process for Schedules

- 3.8.1 Given that many respondents have asked for additional pieces of land to be included within the schedules it is clear that a programmed approach to the review and amendment of schedules is required. In order to fulfil these requirements we propose that the schedules are consulted on once per year in order to include any new, amended, or withdrawn pieces of land.
- 3.8.2 Any future consultation would not amend the powers in place, just the land that the powers were applicable to. The consultation process could therefore be smaller scale and restricted to the recommended six weeks in length. Any new pieces of land nominated throughout the year would be added to the schedule and included in the consultation and, subject to any representations against, a new Order each January. Because the process would not amend the powers the process could be agreed under Delegated Powers of the Director of Environment and Neighbourhoods, rather than needing a full Executive Board decision to be made.
- 3.8.3 If agreed all respondents who nominated new pieces of land that could not be included at this stage, will be contacted to inform them of the future review process.

3.9 Enforcement Policy for the Walking of More Than Four Dogs (Dog Specified Maximum Order)

- 3.9.1 Whilst the consultation process did not propose changes to the Order that limits the number of dogs that can be walked by an individual to four, we have received feedback from professional dog walkers about a lack of clarity in relation to this Order and concern that the Order could adversely impact on their business. Following the consultation at Phase 1, it was clear that the majority of respondents wanted the maximum number of dogs to be set at four and the Order was made on this basis.
- 3.9.2 Having discussed proposals with a representative of the dog walking professional community in Leeds, and following recommendations from Scrutiny Board, we propose a revised policy in relation to the enforcement of the Order.
- 3.9.3 All enforcement action within Leeds is always subject to a public interest test, i.e. where it is not in the public interest to take enforcement action, because the issue is low risk or the resources required are not commensurate with the level of risk presented by the problem, the Council will not pursue offences. This common sense approach to enforcement is key to the credibility of all of the council's enforcement policies.
- 3.9.4 With that in mind the council proposes to formalise this public interest test into the enforcement policy in relation to the Dog Specified Maximum Order. The council proposes that, where the enforcing officer is happy that the person walking the dogs

is undertaking it as a professional service, it would not be deemed in the public interest to pursue action if the person was walking up to the DEFRA recommended maximum of six dogs. This test would be undertaken on a case by case basis when a problem was reported. When a member of the public is observed walking 5 or 6 dogs they would be asked to give their contact details and the name of the business they work for. The enforcing officer would then ask for details to prove that they were a legitimate and professional dog walker, for example that they have relevant insurance in place and that they hold a Home Boarders Licence where necessary. If the test is met, no action would be taken.

3.9.5 As part of this policy professional dog-walkers also recommended that the council seek to promote a Code of Practice for professional dog-walkers, which we have agreed to do as part of communications for the new powers and policy.

3.9.6 If agreed the original Order would therefore remain in place and enforcement action would still be taken where the public interest test is not met and the council does not deem the dog-walker to be appropriately qualified to walk more than four dogs or, or if the dogs breach any of the other Orders detailed above regardless of the number being walked or the professional status of the dog-walker.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 Public consultation has taken place as required by the legislation as detailed in paragraphs 3.4 to 3.6 above.

4.1.2 Non-statutory consultation has taken place with Area Committees and with Head Teachers and Governing Bodies of Schools.

4.1.3 It was agreed in June 2011 that the Safer and Stronger Communities Scrutiny Board should play an active part in analysing the proposed options arising from the Phase 2 Dog Control Orders project before approval is sought from the Executive Board in December 2011 to implement further Dog Control Orders. In view of the need to conclude this piece of work by November, it was agreed that this would be considered via working group meetings.

4.1.4 An initial working group meeting was held on 18th August 2011 to enable Scrutiny Members to gain a better understanding of the aims of the phase 2 project and who has been targeted as part of the consultation process. A further meeting was held on 21st October to discuss the outcome of the consultation process and to address any outstanding issues. The views of the Scrutiny Board (Safer and Stronger Communities) on the Phase 2 Dog Control Order proposals were formally agreed by the Scrutiny Board on 14th November 2011 and are set out in appendix B.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 An Equality Impact Assessment screening of Phase 2 of the project has been completed (see appendix C).

4.2.2 It is a specific requirement of the Orders that they do not apply in relation to recognised assistance dogs.

4.3 Council Policies and City Priorities

- 4.3.1 The Enforcement Policy and new Orders will contribute to the City Priority Plan of Best City for Communities by helping to effectively tackle anti social behaviour and ensuring neighbourhoods are clean.
- 4.3.2 Dogs on Leads Order will result in safer streets for both pedestrians and dogs themselves and result in the ability to pursue additional enforcement action should dogs be allowed to stray.
- 4.3.3 The clarity given around the enforcement policy for the Dog Specified Maximum Order will protect the business interests of legitimate dog walking businesses whilst allowing the council to focus enforcement action where it will have the greatest impact.

4.4 Resources and Value for Money

- 4.4.1 The main resources implications are the advertising costs to bring the order into force and signage costs. Advertising costs are provided for within Environmental Services Dog Control Order project budget. Each sign costs approximately £11. The cost of signage will be borne by the organisation with responsibility for the land in question.
- 4.4.2 The legislation expects that signage must be in place 'where reasonably practicable'. Given that Dogs on Leads at all times powers are applicable to all highways, we do not propose to place signage on all streets. The communication of these powers will be done using the local media and a publicity campaign. Cemeteries and crematoria and any enclosed parks and play areas will be signed however.
- 4.4.3 In relation to Dog Exclusion Orders each piece of land will need to be signed. Parks and Countryside will bear the cost of this for sites under their control. Schools are expected to make arrangements for the provision of sites if they have opted in to the Order. The council will make template sign designs available for school use to minimise costs.
- 4.4.4 The adoption of these orders will provide better tools for council staff to ensure that dog ownership within the city is conducted responsibly without causing nuisance, distress or health hazards. The dog wardens would act as the hub for enforcement but would draw on colleagues in other service areas to support them where appropriate. Such staff could include other Environmental Services staff, Parks, ALMOs and others who are in positions where they come across dog activities regularly.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 The adoption of this new legislation for the City is an Executive function on a city wide basis. As such the decision is eligible for Call In.
- 4.5.2 The process of making and amending, advertising and enforcing the orders is being undertaken in a manner compliant with regulations made under the Clean

Neighbourhoods and Environment Act 1990 to ensure the orders are legally enforceable.

4.6 Risk Management

- 4.6.1 The correct legal process and statutory consultation has been carried out in the development of these proposed new orders. There remains a theoretical risk of a legal challenge but this has been minimised through the process.
- 4.6.2 If the Enforcement Policy is not approved there is a risk of inconsistent application of enforcement powers resulting in complaints.

5 Conclusions

- 5.1 Given the level of public support received through the consultation process it is recommended that the proposed orders should be approved.
- 5.2 Having discussed proposals with a representative of the dog walking businesses in Leeds clarification is needed to the policy in relation to walking multiple dogs on leads. It is clear that the basic principle of the original order still holds, i.e. that we feel that walking any more than four dogs carries with it an increased risk, but that this risk is reduced if the person is trained and insured appropriately. We therefore recommend that the proposed enforcement policy in relation to this area be approved in principle and worked up in detail in consultation with dog walking professionals.

6 Recommendations

- 6.1 Members are asked to consider the outcomes of the consultation and:
 - 6.1.1 Make a Dog Control (Dogs on Leads at All Times) Order in the prescribed form requiring that on the specified land dogs should be on a lead at all times. The specified land will comprise all carriageways and adjacent footpaths and grass verges within the Leeds City Council district and in cemeteries and crematoria (see appendix A).
 - 6.1.2 Revoke the existing Dog Control (Dogs on Leads by Direction) Order (requiring dogs to be put on a lead when the person in control of it is directed to do so by an authorised officer) and make a new Order in the same terms which applies throughout the Leeds district on any land to which the Dog Control (Dogs on Leads at All Times) Order does not apply and to which the public are entitled or permitted to have access (with or without payment).
 - 6.1.3 Revoke the existing Dog Control (Exclusion) Order and replace it with a new Order with an updated schedule of land (see appendix A) including other land designated for a specific purpose such as remembrance and wildlife gardens and school grounds where the schools have opted in to have such an order.
 - 6.1.4 Agree the process for future review and consultation on the schedules of land within the Orders.
 - 6.1.5 Approve the proposed Enforcement Policy for the Dog Specified Maximum Order.

7 Background documents

7.1 Statement of Scrutiny Board (Environment and Neighbourhoods): Enforcement of Dog Fouling 19th February 2009:

7.2 DEFRA Guidance