
Report of the Head of Scrutiny and Member Development

Report to Scrutiny Board (Safer and Stronger Communities)

Date: 12th March 2012

Subject: Recommendation Tracking

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 checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" 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

1. This report sets out the progress made in responding to the recommendations arising from the previous Scrutiny review of the Phase 2 Dog Control Orders.
2. The Scrutiny recommendation tracking system allows the Scrutiny Board to monitor progress and identify completed recommendations; those progressing to plan; and those where there is either an obstacle or progress is not adequate. The Board will then be able to take further action as appropriate.

Recommendations

3. Members are asked to:
 - Agree those recommendations which no longer require monitoring;
 - Identify any recommendations where progress is unsatisfactory and determine the action the Board wishes to take as a result.

1 Purpose of this report

- 1.1 This report sets out the progress made in responding to the recommendations arising from the previous Scrutiny review of the Phase 2 Dog Control Orders.

2 Background information

- 2.1 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.
- 2.2 At its meeting in November 2011, the Scrutiny Board agreed a report summarising its observations, conclusions and recommendations in relation to the proposals arising from the Phase 2 Dog Control Orders project. The Scrutiny Board's report was appended to the report to Executive Board in December 2011.
- 2.3 The Scrutiny recommendation tracking system allows the Board to monitor progress and identify completed recommendations; those progressing to plan; and those where there is either an obstacle or progress is not adequate. The Board will then be able to take further action as appropriate.

3 Main issues

- 3.1 A standard set of criteria has been produced to enable the Board to assess progress. These are presented in the form of a flow chart at Appendix 1. The questions in the flow chart should help to decide whether a recommendation has been completed, and if not whether further action is required.
- 3.2 To assist Members with this task the Principal Scrutiny Adviser, in liaison with the Chair, has given a draft status for each recommendation. The Board is asked to confirm whether these assessments are appropriate and to change them where they are not. Details of progress against each recommendation is set out within the table at Appendix 2.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 Where internal or external consultation processes have been undertaken with regard to responding to the Scrutiny Board's recommendations, details of any such consultation will be referenced against the relevant recommendation within the table at Appendix 2.
- 4.1.2 The Executive Board Member for Environmental Services has been consulted on the response to the recommendations. In relation to recommendation 9, the Executive Board Member is supportive of the conclusion reached by the Project Board, as set out in Appendix 3.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 Where consideration has been given to the impact on equality areas, as defined in the Council's Equality and Diversity Scheme, this will be referenced against the relevant recommendation within the table at Appendix 2.

4.3 Council Policies and City Priorities

4.3.1 This section is not relevant to this report.

4.4 Resources and Value for Money

4.4.1 Details of any significant resource and financial implications linked to the Scrutiny recommendations will be referenced against the relevant recommendation within the table at Appendix 2.

4.5 Legal Implications, Access to Information and Call In

4.5.1 This report does not contain any exempt or confidential information.

4.6 Risk Management

4.6.1 This section is not relevant to this report.

5 Conclusions

5.1 The Scrutiny recommendation tracking system allows the Board to monitor progress and identify completed recommendations. Progress in responding to those recommendations arising from the Scrutiny review of the Phase 2 Dog Control Orders is detailed within the table at Appendix 2 for Members' consideration.

6 Recommendations

6.1 Members are asked to:

- Agree those recommendations which no longer require monitoring;
- Identify any recommendations where progress is unsatisfactory and determine the action the Board wishes to take as a result.

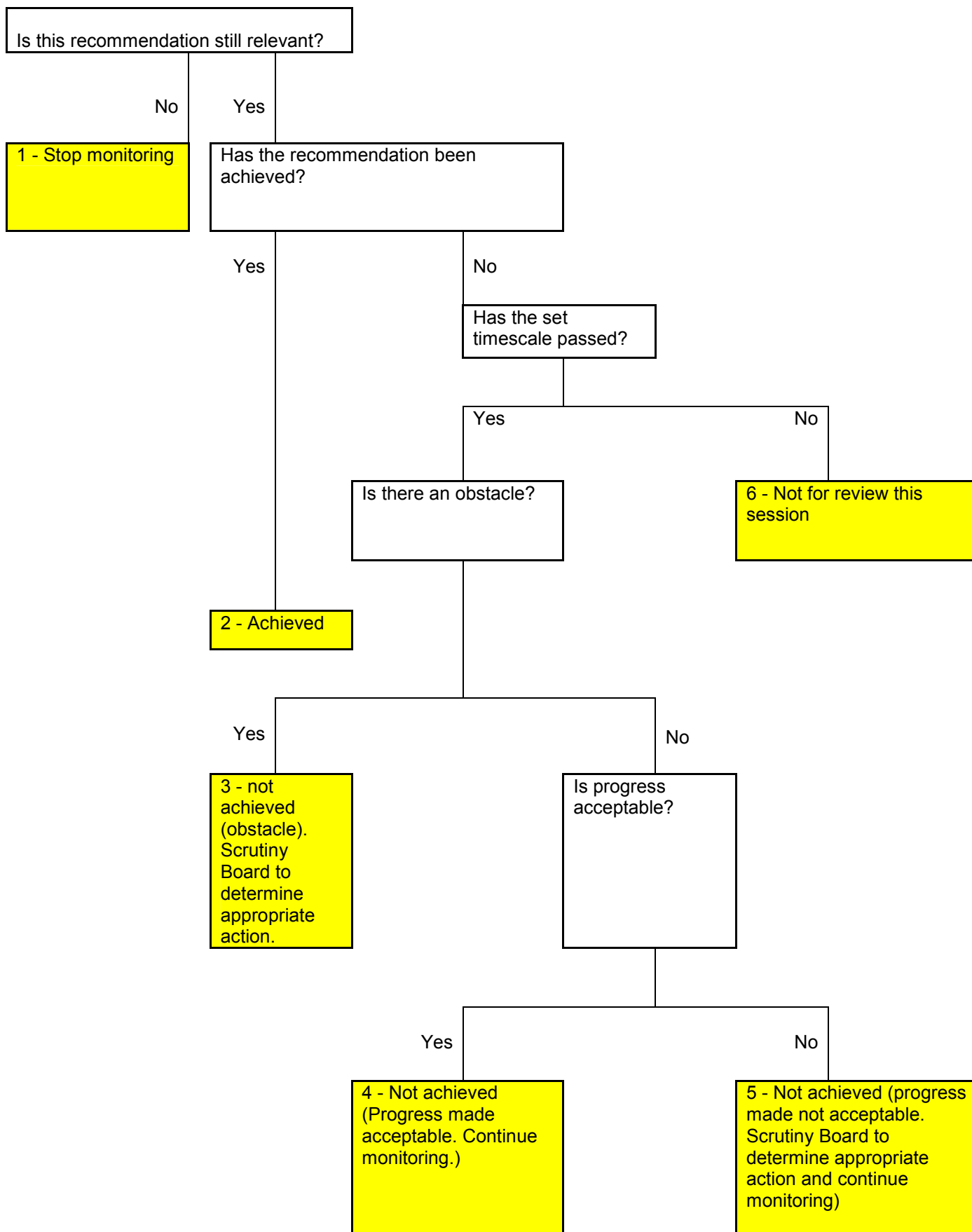
7 Background documents¹

7.1 Report of the Head of Scrutiny and Member Development to the Safer and Stronger Communities Scrutiny Board 'Dog Control Orders – Phase 2 Project – Scrutiny Comments'. 14th November 2011.

7.2 Report of the Director of Environment and Neighbourhoods to Executive Board. 'Dog Control Orders – Phase 2'. 14th December 2011.

¹ The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.

Recommendation tracking flowchart and classifications:
Questions to be Considered by Scrutiny Boards



Review of the Phase 2 Dog Control Orders (November 2011)

Categories

- 1 - Stop monitoring
- 2 - Achieved
- 3 - Not achieved (Obstacle)
- 4 - Not achieved (Progress made acceptable. Continue monitoring)
- 5 - Not achieved (Progress made not acceptable. Continue monitoring)
- 6 - Not for review this session

Recommendation for monitoring	Evidence of progress and contextual information	Status (categories 1 – 6) (to be completed by Scrutiny)	Complete
<p>Recommendation 1 That the Executive Board supports the proposal to revoke the existing Dog Control (Exclusion) Order and replaces it with a new Order with the proposed updated schedule of land.</p>	<p>Current position: This proposal was agreed by Executive Board in December 2011.</p>	2- Achieved	
<p>Recommendation 2 That as part of the Council's approach to review or amend schedules of land associated with Dog Control Orders, the Scrutiny Board recommends that the relevant Ward Members be approached to share their local knowledge of the designated areas to help identify any anomalies prior to finalising the schedule.</p>	<p>Current position: A reminder email was sent to all previous email recipients on 10th October; including all Councillors, Town and Parish Councils, Dogs Trust, Dog walking organisations; reminding them of the closing date for the consultation. The consultation closed on 14th October in order that the full site list could be signed off through Executive Board in December 2011. The future review process, agreed by Executive Board, will include consultation with local Ward Members to identify any anomalies prior to the schedule being finalised.</p>	2 – Achieved	

<p>Recommendation 3 That the Executive Board supports the proposal to make a Dog Control (Dogs on Leads at All Times) Order requiring that dogs should be on a lead at all times on the specified land, which is to include all carriageways, adjacent footpaths and grass verges within the Leeds City Council district and in cemeteries and crematoria.</p>	<p>Current position: This proposal was agreed by Executive Board in December 2011.</p>	<p>2 - Achieved</p>	
<p>Recommendation 4 That the Executive Board supports the proposal to revoke the existing Dog Control (Dogs on Leads by Direction) Order 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.</p>	<p>Current position: This proposal was agreed by Executive Board in December 2011.</p>	<p>2 - Achieved</p>	
<p>Recommendation 5 That non-payment of Fixed Penalty Notices in relation to Dog Control Orders are actively pursued and further legal action taken where required, particularly in relation to repeat offenders.</p>	<p>Current position: The Council's Enforcement and Regulatory staff are absolutely clear that if payment of a Fixed Penalty Notice is not made the Council will actively pursue prosecutions through the Courts. Furthermore if an offender has previously had a Fixed Penalty Notice the Council will seek immediate prosecution rather than allow the discharge of the offence through an FPN. Locality Teams have reinforced this position through the recent training given to enforcement staff around Dog Control Orders.</p>	<p>4 Not achieved (Progress made acceptable. Continue monitoring.)</p>	

	<p>The new powers allow us to deal more effectively with stray dogs. When dogs are picked up and returned to their owners, unless there is clear justification why the dog was straying, the owner will now be fined for allowing the dog on the highway without a lead. In the first 4 weeks of the Order being in place the Council has issued 10 Fixed Penalty Notices for dogs not being on the lead on a public highway, the vast majority in relation to dog owners allowing their dogs to stray.</p>		
<p>Recommendation 6 That further work is undertaken by the Council to significantly expand the level of staff resource available to enforce Fixed Penalty Notices and also act as professional witnesses to any breaches of the Dog Control Orders.</p>	<p>Current position:</p> <p>All 48 enforcement staff within the Locality Teams have been trained and can now undertake enforcement action in relation to Dog Control Orders. This is a significant expansion on the 6 Dog Wardens who have been able to take action in the past.</p> <p>A form has been developed to enable PCSOs to report any environmental problems they encounter and can also act as professional witnesses to any Dog Control Order incidents. Locality Teams are working closely with partners in the ALMOs and Parks and Countryside to explore the possibilities of them becoming more involved in enforcement actions.</p>	<p>4 Not achieved (Progress made acceptable. Continue monitoring.)</p>	
<p>Recommendation 7 That any new Dog Control Orders are effectively communicated to the public, which includes the use of appropriate signage, and for the Council to reinforce the message that Dog Control Orders will be rigorously enforced.</p>	<p>Current position:</p> <p>A media plan has been developed and is being delivered focussing on the new powers in relation dogs on leads on the highway and the increased number of people who are able to take enforcement action in relation to dog fouling. A key message in this media work is that the Council will and is rigorously enforcing the Orders. This is being delivered in late February and early March.</p> <p>Signage for each new site is being erected throughout February and March. There is no plan to erect signage on every highway in Leeds to advertise the Dogs on Leads Order.</p>	<p>4 Not achieved (Progress made acceptable. Continue monitoring.)</p>	

<p>Recommendation 8 That the Executive Board supports the development of an Enforcement Policy in relation to the Dog Specified Maximum Order.</p>	<p>Current position: This proposal was agreed by Executive Board in December 2011.</p>	<p>2 - Achieved</p>	
<p>Recommendation 9 That the Project Board undertakes further work in relation to parks and playing pitches that are used by schools that have no on-site green space. This is to accurately assess the extent of the problems encountered in such areas in relation to dog fouling in particular and explore the best use of the full range of powers available to the Council in promoting responsible dog ownership in such areas. Such work should be undertaken as a matter of urgency, with an update report brought back to the Scrutiny Board by March 2012.</p>	<p>Current position: See Appendix 3 for a detailed report of which the conclusion is: The Project Board would acknowledge that the use of the Dogs on Leads Order on playing fields which schools use may help with enforcement action in that any dog fouling would be by definition very close to their owner and therefore easier to prosecute if observed. However, having weighed up the evidence and options the Project Board do not feel that it is appropriate to further restrict dogs on these pieces of land for the following reasons.</p> <ul style="list-style-type: none"> • It would likely be seen as disproportionate to enforce on safety grounds where there is no safety issue, e.g. the park was empty but for the person and their dog; • It is unlikely that a blanket restriction at all times of the day could be justified and a restriction only at times when the school is using the park is unlikely to have any impact on dog fouling; • If we consulted and changed the Dogs Exclusion or Dogs on Leads Orders to be justified on the basis of preventing dog fouling this could set a difficult precedent for other parks where fouling is also an issue; • There is no evidence to show that dog fouling has a greater impact in parks used by schools than those that are not; • There are existing powers to prosecute people who allow their dogs to foul anywhere in Leeds. Simply extending the powers is unlikely to result in any more convictions as the breach still has to be observed. 	<p>4 Not achieved (Progress made acceptable. Continue monitoring.)</p>	

	<p>The Project Board's view is therefore that the way to deal with these parks is to identify them through Parks and Countryside Services and, where dog fouling is felt to be an issue, undertake targeted enforcement using the larger range of staff that are now trained to do this.</p> <p>The Executive Member for Environmental Service has been consulted on this response and is broadly supportive of this approach.</p>		
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Detailed Response to Scrutiny Board Recommendation 9

1. Purpose of this report

Recommendation 9 of the Scrutiny review of the Phase 2 Dog Control Orders asked that: *“...the Project Board undertakes further work in relation to parks and playing pitches that are used by schools that have no on-site green space. This is to accurately assess the extent of the problems encountered in such areas in relation to dog fouling in particular and explore the best use of the full range of powers available to the Council in promoting responsible dog ownership in such areas. Such work should be undertaken as a matter of urgency, with an update report brought back to the Scrutiny Board by March 2012.”*

Many schools in Leeds do not have their own green space and use parks and playing pitches on public green spaces instead. Scrutiny Board asked that the Project Board assess whether the powers should be extended on these pieces of land to prevent dog fouling and support the effective enforcement of the Dog Fouling Order on land where there was an increased risk to school age children.

2. Background

Dog Control Orders were set up to deal with a range of issues caused by irresponsible dog ownership. Five Orders are in place:

- The Dog Fouling Order has been in place since 2006 and makes it an offence to not clean up after a dog has fouled on any public access land;
- The Dog Exclusion Order excludes dogs from specified pieces of land such as children’s play areas and some school grounds;
- The Dogs on Leads at all Times Order requires dogs to be on leads next to all carriageways and adjacent footpaths and grass verges, and also cemeteries, crematoria, enclosed church yards and some specialist or ornamental gardens;
- The Dogs on Leads by Direction Order gives an authorised officer of the council the power to instruct a dog owner to put their dog on the lead to prevent nuisance behaviour;
- The Dogs Specified Maximum (Leeds) Order restricts the maximum number of dogs that can be walked at a given time to 4.

Breach of any of these Orders is, in effect, a criminal offence liable on summary conviction, to a fine not exceeding level 3 on the standard scale (£1,000). A person may be offered the opportunity to discharge any liability to conviction for any offence under any Dog Control Order by payment of a fixed penalty. The specified amount of the fixed penalty is £75.

Given that a breach is a criminal offence the Council needs to make sure that the enforcement of the Orders is proportionate to the scale of the problem and can be robustly argued in terms of evidence in Court.

As the DEFRA guidance on Dog Control Orders states:

“The authority 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. A failure to give due consideration to these factors could make any subsequent Dog Control Order vulnerable to challenge in the Courts.”

3. Justification for the original Orders

The justification for the Orders that are now in place was clearly stated in the public advertisement used during the consultation process. For Dogs on Leads Order the justification was:

“to 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. This is because dogs can cause considerable anguish to visitors at an already distressing time, especially if they are creating a disturbance or fouling.”

For Dog Exclusion Orders the justification was:

“...where a dog may cause damage and disturbance to the area even when under close control. It is also proposed 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.”

Whilst the Council could consult and change the justification of the Orders to include the specific reference to enabling stronger enforcement of the Dog Fouling Order this is unlikely to strengthen the powers the Council currently has. An Order is already in place that allows us to prosecute dog owners who allow their dogs to foul areas. Using the Dog Exclusion or Dogs on Leads Order to help with enforcing the Dog Fouling Order is fraught with problems, largely because the Council could not prosecute two Orders at the same time. It is also worth noting that this justification could equally be applied to many parks that have dog fouling problems but which schools do not use. This could lead to some of our largest and most prestigious parks falling within the justification for extension of the two Orders.

4. Extension of the Orders specifically to parks used by schools

Schools that use parks and playing pitches in lieu of their own on-site green space should have a formal agreement with Parks and Countryside Services to do so. This formal agreement should describe the hours and scope of usage and any issues within the Park should be managed through Parks and Countryside Services.

Many schools in Leeds now have Dog Exclusion Orders in place on their grounds. This is justified because the primary purpose of the grounds is for school use. The primary purpose of parks used by schools is for public recreation rather than school use. When deciding on the Order that should be in place the Council needs to assess the primary purpose against the risk of harm to school children using the area. There would have to be enough evidence that a schools use of the park led to a higher risk than in a different park not formally used by a school that had similar dog fouling problems.

To date Parks and Countryside Services have no evidence that there is a greater problem with dog fouling in the parks formally used by schools. A reminder email was sent to all school Head Teachers including the question as to whether they would want dogs on leads on parks which they used for recreation. The Project Board did not receive any response from any school asking for this restriction to be put in place.

If the Council did consider that the risk was great enough to justify a Dog Exclusion or Dogs on Leads Order on these sites the Council would also need to consider whether the use of the park by the school only at certain times or days of the week was enough to justify an 'at all times' restriction on dogs. Whilst an Order could be put in place that restricted dogs at the times when the school was using the park there are significant difficulties with this. The offence committed is that a person cannot 'knowingly' let their dog breach the Orders. Any confusion about the times or days the restrictions apply would be used to provide justification that the owner did not 'know' that the Order was in place and could leave us open to challenge and make the Order unenforceable. It is also unlikely that the times when dogs would be excluded would coincide with the times that irresponsible dog owners let their dogs foul meaning that it is unlikely that the powers would lead to any increased in enforcement action taken.

The offence committed also has to be observed, i.e. an enforcement officer or reliable witness needs to have observed the offence taking place. In this context an extension of Dogs on Leads Order to these types of park would not, in itself, increase the number of prosecutions being made. In order to prosecute the Council would still need people in place to observe the problem and, if a dog were observed fouling, regardless of the Dogs on Leads Order being in place, the owner would be prosecuted.

5. Conclusion

The Project Board acknowledges that the use of the Dogs on Leads Order on playing fields which schools use may help with enforcement action in that any dog fouling would be by definition very close to their owner and therefore easier to prosecute if observed. However, having weighed up the evidence and options the Project Board do not feel that it would be appropriate to further restrict dogs on these pieces of land for the following reasons.

- It would likely be seen as disproportionate to enforce on safety grounds where there is no safety issue, e.g. the park was empty but for the person and their dog;
- It is unlikely that a blanket restriction at all times of the day could be justified and a restriction only at times when the school is using the park is unlikely to have any impact on dog fouling;
- If the Council consulted and changed the Dogs Exclusion or Dogs on Leads Orders to be justified on the basis of preventing dog fouling this could set a difficult precedent for other parks where fouling is also an issue;
- There is no evidence to show that dog fouling has a greater impact in parks used by schools than those that are not;
- There are existing powers to prosecute people who allow their dogs to foul anywhere in Leeds. Simply extending the powers is unlikely to result in any more convictions as the breach still has to be observed.

The Project Board's view is therefore that the way to deal with these parks is to identify them through Parks and Countryside Services and, where dog fouling is felt to be an issue, undertake targeted enforcement using the larger range of staff that are now trained to do this.