

MAIDSTONE BOROUGH COUNCIL

CABINET MEMBER FOR ENVIRONMENT

**REPORT OF ASSISTANT DIRECTOR OF ENVIRONMENT AND
REGULATORY SERVICES**

Report prepared by Martyn Jeynes

Date Issued: 25/05/2012

1. Introduction of Dog Control Orders

1.1 Key Issue for Decision

To consider whether to expand the existing enforcement powers available in respect of dog control.

1.2 Recommendation of Assistant Director of Environment and Regulatory Services

1.2.1 That permission is granted to implement the steps described in appendix 1 to introduce dog control orders in relation to:

1. Failing to remove dog faeces
2. Permitting a dog to enter land from which dogs are excluded

1.2.2 That authorisation is given to start the consultation process required by the Dog Control Orders (Procedures) Regulations 2006 and for the publication of notices for the proposed dog control orders identifying the land and summarising the proposed orders.

1.2.3 That a charge of £75 is set for fixed penalty notices served under the new orders.

1.2.4 To note that following the public consultation, any representations made will be considered by the Cabinet Member.

1.3 Reasons for Recommendation

1.3.1 The existing enforcement framework for controlling dogs is restricted to offences relating to dog fouling under Section 3 of the Dogs (Fouling of Land) Act 1996 and by-laws. The Clean Neighbourhoods and Environment Act 2005 allows for a local authority to introduce stronger enforcement powers to deal with failing to remove faeces and permitting a dog to enter land from which dogs are excluded.

- 1.3.2 Given the rural nature of our borough there are many dog owners across Maidstone, the majority act responsibly and keep their dog(s) under control. Unfortunately a small number of inconsiderate dog owners do not keep their dog(s) under control and do not clear up after their dog(s) cause many problems for the community.
- 1.3.3 Dog owners have the need to enjoy and exercise their pets. However, residents and in particular children also have a need to be able to enjoy a clean safe environment free from uncontrolled dogs and dog faeces.
- 1.3.4 In previous years dog control has been through the use of by-laws and by the Dogs Fouling of Land Act (DFLA). These by-laws had to be approved by the Secretary of State. The Secretary of State approved various sets of by-laws over time but enforcement of these by-laws is problematic and resource intensive. The DFLA allows authorised officers to issue Fixed Penalty Notices (FPNs) but is limited in its scope as to the areas to which it applies and the fine is fixed lower than other environmental offences. The Government in seeking to streamline and simplify these legal controls which allow (under the Clean Neighbourhoods and Environment Act 2005 (CN and EA 2005)) local authorities to decide for themselves, in consultation with stakeholders, where and how dogs should be controlled by making dog control orders. Dog control orders will replace all the existing Byelaws and replace the DFLA.
- 1.3.5 The dangers to health from dog faeces are well documented. Research into health implications concludes that diseases found in dog faeces and urine can be passed from dogs to humans through contact with faeces and contaminated soil. It is an entirely preventable health risk and one of the main reasons that dog owners should clean up after their pets.
- 1.3.6 The Clean Neighbourhoods and Environment Act 2005 gave Councils new powers to deal with the control of dogs and other environmental issues such as waste carrying, fly-posting and graffiti by way of fixed penalty notices. Maidstone Borough Council has been gradually developing its policies regarding its approach to this new way of working before considering making a dog control order. The DFLA covers dog fouling (with some restrictions) so there has been less reason to implement the new legislation earlier. The council has adopted a prudent approach by learning from other authorities that have adopted these control orders sooner. A large number of authorities, including many neighbouring authorities have now successfully implemented dog control orders.

- 1.3.7 Under the DFLA the maximum level for FPN's is £50. This is less than the current fines for littering and therefore implementing the dog control order for fouling will bring the fine into line with other fixed penalty notice charges.
- 1.3.8 It is proposed to exclude dogs from the enclosed play areas within the parks and opens spaces as listed in appendix 1. These parks have been identified as having a physical barrier which segregates the play area from the rest of the park. Dogs will be discouraged from unfenced play areas but it will not be an offence under the proposed order.
- 1.3.9 In addition to children's play areas an exclusion order is required for the crematorium where there is an ongoing issue with unauthorised access by dog walkers ignoring the informal "no dogs" policy at the crematorium unless with written consent as part of a service.
- 1.3.10 The use of dog control orders is intended to continue to promote responsible dog ownership. It is not intended to discourage dog ownership.
- 1.3.11 There is a statutory requirement to consider all representations made against the proposed orders during the consultation period. These will be taken to the Cabinet Member for Environment for their consideration prior to the order being agreed formally.

1.4 Alternative Action and why not Recommended

- 1.4.1 To not undertake the proposed implementation of dog control orders will limit the authority's powers to deal with fouling and dogs, particularly in children's play areas.
- 1.4.2 In the event that the proposed orders are not made the absence of legislation means that the current dog fouling fixed penalty charge will remain frozen at £50. This is considerably less than the penalty for littering which is set at £75 despite dog fouling being considered by many as an anti-social act which is at least as offensive as littering. However, should the proposed orders be made and come in to force they will increase the amount of fixed penalty to £75, they are capable of amendment and will introduce measures to help promote responsible dog ownership underpinned by effective and proportionate enforcement measures which may include prosecution in the event a fixed penalty notice goes unpaid.

1.4.3 The use of control orders should not be viewed as a restriction on civil liberties but rather ensuring the authority is equipped with the necessary tools to protect the environment and where appropriate and necessary can enforce against those who spoil the environment for others.

1.5 Impact on Corporate Objectives

1.5.1 For Maidstone to be a decent place to live

This priority seeks for Maidstone to continue to be a clean and attractive environment for people who live in and visit the Borough.

1.5.2 Dog owners have the need to enjoy and exercise their pets. However, residents and visitors to the borough in particular children also have a need to be able to access areas such as recreational/play areas which are free from dogs or free from dog faeces and uncontrolled dogs. The links between fouling and the nuisance caused by irresponsible dog owners with the health of the community are well documented but the impact of dog related issues and other environmental crimes also have a more detrimental effect as one of the wider determinants of health.

Poor physical environment and perceived antisocial behaviour are associated with fear of crime, which has significant detrimental effects on the health of a neighbourhood. Fear of crime and anti-social behaviour can lead to social exclusion within a community and therefore also weakens our communities.

1.6 Risk Management

1.6.1 There are no perceived risks from implementing the proposed control orders as they are designed to protect the environment against irresponsible dog owners. The required consultation will allow the public and stakeholders the opportunity to voice their opinion on the proposed control orders as required.

1.6.2 An essential part of implementing the control orders will be to ensure there is a clear and positive communication strategy to minimise the risk of inaccurate reporting leading to negativity from responsible dog owners.

1.6.3 The following exemptions will apply to the orders:

- i) The following persons are exempt from being required to remove their dog faeces from the land forthwith:
 - a person who is registered as a blind person
 - a person who has a disability and relies on a dog trained from the following prescribed charities i.e. from the "Dogs for the Disabled", "Support Dogs" or "Canine Partners for Independence".

- ii) The following are exempt from the dog exclusion order, i.e. they are able to take their dogs into the dog exclusion zones:
 - a person who is registered as a blind person
 - a person who has a disability and relies on a dog trained by the following prescribed charities i.e. from either "Dogs for the Disabled", "Support Dogs" or "Canine Partners for Independence".
 - a person who is deaf and relies on a dog trained by the Hearing Dogs for Deaf People.

1.7 Other Implications

1.7.1

1.	Financial	X
2.	Staffing	
3.	Legal	X
4.	Equality Impact Needs Assessment	
5.	Environmental/Sustainable Development	
6.	Community Safety	
7.	Human Rights Act	
8.	Procurement	
9.	Asset Management	

1.7.2 Financial

The financial implications of administrating the introduction of these dog control orders will be met within the existing budget of the enforcement team.

1.7.3 Legal

Whilst the introduction of dog control orders will raise awareness and discourage would be offenders we do not anticipate issuing any more fines than are currently issued. The exclusion order will be largely self policed within the community and will only be enforced where officers witness or are alerted to a specific issue. The fouling order does not change the existing offence as currently enforced.

1.8 Relevant Documents

1.8.1 Appendices

Appendix 1: Procedure for adopting Dog Control Orders in Maidstone and schedule of proposed exclusion zones.

1.8.2 Background Documents

1.8.2.1 DEFRA - Dog Control Orders- Guidance on Sections 55-67 Clean Neighbourhood and Environmental Act 2005
<http://archive.defra.gov.uk/environment/quality/local/legislation/cnea/documents/dogcontrol-orders.pdf>

1.8.2.2 Local Better Regulation Office – Priority Regulatory Outcomes A New Approach to Refreshing the National Enforcement Priorities for Local Authority Regulatory Services Final Report
<http://www.lbro.org.uk/docs/priority-regulatory-outcomes-report.pdf>

IS THIS A KEY DECISION REPORT?

Yes

No

If yes, when did it first appear in the Forward Plan? October 2011 – Jan 2012

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This is a Key Decision because: ...It effects the whole borough

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Wards/Parishes affected:All

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How to Comment

Should you have any comments on the issue that is being considered please contact either the relevant Officer or the Member of the Executive who will be taking the decision.

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