

REPORT TO THE EXECUTIVE

Report No. 15

Date of Meeting	15 th March 2007
Title of Report	The Fouling of Land by Dogs North Wiltshire District Council Order 2007
Portfolio	To protect and enhance the local environment
Link to Corporate Priorities	This proposal is linked to the environmental policy of achieving cleaner, safer and better streets
Key Decision	No
Executive Workplan Ref	B315
Public Report	Yes

Summary of Report

To consider the making of a Dog Control Order under Section 55 of the Clean Neighbourhoods and Environment Act 2005 in respect of failure to remove dog faeces from designated land in the North Wiltshire District.

Officer Recommendations

1. **The Environmental Health Team Leader be given delegated authority to publish notice in a local newspaper of the proposal to make an Order in the form set out in the Appendix to this report, requiring removal of dogs faeces from those areas of land in the North Wiltshire District detailed in the Schedule to that Order.**
2. **That any objections, or representations received, be considered at a future meeting of the Executive.**
3. **In the event of no objections or representations being received, that authority be delegated to the Legal Services Team Leader in consultation with the Environmental Health Team Leader to make the Order and to publish notice of the making of the Order in a local newspaper.**
4. **The level of fixed penalty be set at £75.00 with a reduction to £50.00 if paid within 14 days of the issue of a Fixed Penalty Notice.**
5. **The Executive to resolve that:**
 - (i) **Requests for the Council to make any Dog Control Orders on behalf of Town or Parish Councils shall be supported with evidence to show that the Order is necessary and proportional to deal with the dog problem.**
 - (ii) **The Council shall waive the legal costs but be reimbursed by the Town or Parish Council the cost of advertising and signage.**

Other than those implications agreed with the relevant Officers and referred to below, there are no other implications associated with this report.

Financial Implications	Legal Implications	Community & Environmental Implications	Human Resources Implications	Equality & Diversity Implications
NONE	YES	YES	NONE	YES

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1. Introduction

- 1.1 To consider a report for the introduction of a Dog Control Order under Section 55 of the Clean Neighbourhoods and Environment Act 2005 to require removal of dog faeces from land detailed in Appendix 1

2. Options

- 2.1 The options are to make the Order or not to make the Order.

3. Background Information

Dog Control Orders

- 3.1 Dog Control Orders were introduced by Section 55 of the Clean Neighbourhoods and Environment Act 2005. Essentially, they replace bye-law making powers and the Dogs (Fouling of Land) Act 1996. However, all existing controls remain in force until they are specifically superseded by a new Dog Control Order.
- 3.2 Dog Control Orders can create the following offences:-
- (i) Failing to remove dog faeces from land
 - (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 dogs are excluded
 - (v) Taking more than a specified number of dogs onto land.
- 3.3 Any authority proposing to make a Dog Control Order must publish notice of their intention to make the Order in a local newspaper giving at least 28 days for objections or representations to be made.
- 3.4 Any objections or representations received must be considered before an Order is made.
- 3.5 An Order cannot be brought into force less than 14 days after it is made, and a notice publicising the making of an Order must be placed in a local newspaper at least 7 days before the Order comes into force.
- 3.6 Signs summarising the effect of the Order must be posted at the entrance to the land concerned, and, if appropriate, within the land itself.
- 3.7 It is an offence to breach the terms of the Order carrying with it a maximum fine of £1,000.
- 3.8 Fixed penalties notices for Dog Control Order offences may be issued by authorised officers.
- 3.9 Officers authorised to issue fixed penalties also have the power to require the name and address of a person they wish to issue with a fixed penalty notice. In such cases failure to supply these details or to give a false name and address to an authorised officer is an offence for which a maximum fine of Level 3 on the standard scale may be given upon conviction. This is currently £1000.

4. Proposed Dog Control Order

- 4.1 North Wiltshire District Council has currently one Order specific to fouling of land by dogs. This Order (as set out below) was established under the Dog (Fouling of Land) Act 1996. The aim is to control dog fouling within the district and give Officers powers to prosecute for breaches of the legislation.

The North Wiltshire District Council (Dog Fouling of Land) Order 1996 states that:

An offence is committed if a person in charge of a dog does not clear up forthwith after the dog has defecated on any of the land in the North Wiltshire District as designated in the Schedule.

Land designated by description

- a) Any land within the administrative area of North Wiltshire District Council 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.
- b) All carriageways within a speed limit of 40mph or less and adjoining footpath verges within 3 metres of such carriageways

Exempted land

- a) Carriageways with a speed limit of more than 40mph and land running alongside them:
- b) land used for agriculture or for woodland;
- c) land which is predominantly marshland, moor or heath; and
- d) Rural common land.

Being unaware of a dog's defecation or not having a device or other suitable means of removing the faeces is not a reasonable excuse for failing to comply with the order.

Registered blind people are specifically exempted from the order.

The current maximum fine on prosecution is £1000.

- 4.2 It is proposed that the order detailed in 4.1 above be replaced with a new Control Order under Section 55 of the Clean Neighbourhoods and Environment Act 2005 as detailed in Appendix 1. The major changes are that the new Order does not have any exemptions regarding carriageways with a speed limit of more than 40 mph and land running alongside them. This will bring dog fouling control measures to many villages in North Wiltshire, where the exemption previously applied. The fixed penalty notice rises to £75 from £50. It is also proposed that the penalty will be reduced to £50 if early payment is made within 14 days of the issue of the Fixed Penalty Notice. Failure to pay the Fixed Penalty Notice will result in legal action being taken against the alleged offender. This action will be taken in the Magistrates Court with a maximum fine on conviction not exceeding Level 3, which is currently set at £1,000. The actual fine level and awarding of legal costs is entirely at the discretion of the Magistrates.
- 4.3 An extensive consultation exercise has been carried out with the Town and Parish Councils. A copy of the feedback form is attached in Appendix 2 and a summary of the feedback in Appendix 3. The main part of the consultation was to obtain feedback on the dog fouling issue. However the opportunity was taken to see if there were any other dog issues which warranted district wide approach and whether any town or parish council was intending to implement their own control orders. There was extensive support for the control of fouling of land by dogs. Issues relating to not keeping a dog on a lead, not putting a dog on a lead under direction, permitting a dog to enter land where dogs are excluded and taking more than a specified number of dogs on to land were not raised as major issues. Should problems occur they are best dealt with by a specific control order to deal with any local issue. Members are advised that it is a legal requirement that any authority considering the making of a Dog Control Order must be able to show that the Order is a necessary and proportionate response to problems caused by the activities of dogs and those in charge of them.

4.4 The power to make a Dog Control Order under Section 55 of the Clean Neighbourhoods and Environment Act 2005 act are concurrent powers exercisable by the Town/Parish Councils as well as District Councils. The consultation revealed that Town and Parish were generally not intending to exercise their powers and wished for the District Council to carry out the making of Dog Control Orders on their behalf. The majority of respondents did not wish to make any contribution to the Council's costs in progressing any such request.

4.5 Whilst the consultation was taking place a request was received from the Malmesbury Town Council to make an Order preventing any access of dogs to the White Lion Park Area. The Executive approved the order at the meeting on the 9th November 2006. As part of partnership working between district and town and parish councils, the reimbursement of Council's legal fees was not sought, however it was resolved that the Malmesbury Town Council be required to reimburse the costs of advertising and signage. It is recommended that this principle be applied to any future requests received from Town and Parish Councils relating to the making of any Dog Control Orders.

5 Financial implications.

5.1 The cost of signage and advertising the Order shall be met from existing budget.

6 Legal Implications

6.1 It is a legal requirement that any authority considering the making of a Dog Control Order must be able to show that the Order is a necessary and proportionate response to problems caused by the activities of dogs and those in charge of them.

6.2 The powers to make a Dog Control Order under Section 55 of the 2005 Act are concurrent powers exercisable by the Town/Parish Councils as well as District Councils.

7 Environmental Implications

7.1 The principal benefit from introducing the Dog Control Order dealing with fouling of land is to extend dog fouling control measures to many new parishes that were not covered under the 1996 Order. The Order should bring about further reduction in dog fouling across the district.

8 Equality and Diversity Implications

8.1 Dog Control Orders provide exemptions in particular cases for registered blind people, and for deaf people and for other people with disabilities who make use of trained assistance dogs.

9 Risk Analysis

9.1 There are no risks associated with following the recommendations.

Appendices:	<ul style="list-style-type: none"> • Appendix 1 – Dog Control Order - Fouling of land by dogs. • Appendix 2 (a) & (b) – Consultation letters and feedback form. • Appendix 3 - Summary of Town and Parish responses.
Background Documents Used in the Preparation of this Report:	<ul style="list-style-type: none"> • None other than those annexed to the report

Previous Decisions Connected with this Report

Report	Committee & Date	Minute Reference
Dog Control Order – Dog exclusion White Lion Park Malmesbury	Executive 9/11/06	E90

