

Peterborough North Area Committee	Agenda Item No. 8
23 March 2011	Public Report

Report of the Senior Neighbourhood Enforcement Officer, Regulatory Services

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DOG CONTROL ORDER RESEARCH

1. PURPOSE

1.1 At the September Peterborough North Area Committee meeting it was agreed by the Members that information would be required to inform a debate around whether or not Dog Control Orders are required in the Peterborough North area. Concerns were raised regarding the behaviour of dogs that were allowed, by their owners, to run around without a lead and that some owners were not picking up the fouling left by their dog. This document outlines what is involved in introducing Dog Control Orders, including the legal process, the evidence required, staffing requirements and potential costs. It is designed to help shape the thinking of the Peterborough North Area Committee and be the starting point for further discussion.

2. LEGISLATION

2.1 Dogs (Fouling of Land) Act 1996

Peterborough currently has an Order in place which is designed to prevent dog fouling. This order came into operation in 1998 and was introduced under the Dogs (Fouling of Land) Act 1996. In 2005 the Clean Neighbourhoods and Environment Act came into operation. It stated that the Dogs (Fouling of Land) Act 1996 would cease to have an effect. That meant that from 2005 onwards no further orders could be implemented using the Dogs (Fouling of Land) Act 1996. However, it also stated that any Orders already in place would still be valid. This original Order already in place in Peterborough covers the entire city. It was written in such a way that any expansion to the city or its boundaries would also be covered by the Order

Through this Order the offence of dog fouling can be dealt with by way of a Fixed Penalty Notice. The fine associated with this is £50.

2.2 Clean Neighbourhoods and Environment Act 2005

Section 55 of the Clean Neighbourhoods and Environment Act 2005 then gave Local Authorities and Parish Councils the ability to introduce Dog Control Orders to restrict and govern the following:

- dog fouling on an area of land;
- keeping dogs on leads;
- the exclusion of dogs from an area of land and
- the number of dogs a person can take onto an area of land.

Any Dog Control Orders introduced using this legislation must clearly state the area of land to be affected by the Order and the times or periods during which an offence is to apply. This Act can apply to any land which is open to the air, and to which the public have either paid or free access.

Section 59 of the same act states that an authorised officer from the Local Authority or a Police Community Support Officer can, when satisfied that an offence has taken place,

issue a Fixed Penalty Notice.

Section 60 of the Act states that the default amount for this Fixed Penalty Notice is £75. However, the Local Authority is able to amend this amount (within reason).

2.3 **New Legislation**

The Home Office have recently released a document for public consultation about a new piece of legislation. This legislation is designed to reform the way Anti-Social Behaviour is dealt with by the Police and Local Authorities.

Within this document it is suggested that Dog Control Orders, previously covered by the Clean Neighbourhoods and Environment Act 2005, would be replaced by a new 'Community Protection Order'.

Consultation on this document is due to close on 3 May 2011 and can be seen at <http://www.homeoffice.gov.uk/publications/consultations/cons-2010-antisocial-behaviour/asb-consultation-document>

3. **THE LEGAL PROCESS**

3.1 As part of the research Peterborough City Council's Legal team have identified the correct process required to introduce a Dog Control Order. The process is described briefly below:

- A. A proposal should be written confirming which offences are to be controlled by the order.

There are 4 possible offences which can be introduced by the order (see 2.2) and each of these requires a specified form of words in order to be a valid Order. The penalty, exemptions and defences should also be described for each offence.

- B. The land to be covered must be accurately described.

Generally all land open to the air, to which the public has access, can be included. However there are some minor exemptions. A map can be used to define the land clearly.

- C. There should then be a formal consultation process. This should include other possible makers of Dog Control Orders in the proposed area, for example, parish councils. This process should be a full public consultation and include advertising the proposed Order in a local paper and a public display of documents and maps

- D. The consultation should run for a minimum of 28 days to allow enough time for responses to be received by the Authority.

- E. Elected ward Councillors would then consider the proposal and all the responses from the consultation process. As part of this process Members should consider if the Dog Control Order is a necessary and proportionate response to problems caused by the activities of dogs and their owners. There must be a balance between the interests of all members of the public. The proposal can be approved (and the Dog Control Order made) or not approved. The conditions of the prospective order can also be changed. However, any changes to the proposal would mean another full public consultation.

- F. Members must decide when the Dog Control Order will come into effect. This should be a minimum of 14 days after the decision to introduce the Order is made. At least 7 days before it comes into effect the Dog Control Order must be advertised in a local newspaper and be displayed for public inspection.
- G. Notices warning of the Dog Control Order, and the offences associated with it, must be placed on the land affected by it. They should be placed at regular intervals on the land.

4. **POINTS TO CONSIDER**

4.1 **Department for Environment, Food and Rural Affairs Guidance**

Whilst the Clean Neighbourhoods and Environment Act 2005 gives local authorities the power to introduce dog control orders, the Department for Environment, Food and Rural Affairs guidance on the Act states that:

“It is important for any authority considering a dog control order to be able to show that this is a necessary and proportionate response to problems caused by the activities of dogs and those in charge of them” and

“any authority needs to balance the interest of those in charge of dogs against the interests of those affected by the activities of dogs and that a failure to give consideration to these factors could make any subsequent dog Control Order vulnerable in the Courts.”

The guidance also advises that Authorities should be prepared to justify each Order if challenged. This justification would need to be robust and should include a full log of complaints and evidence to show that the reasonable and proportionate response to those complaints was the introduction of a Dog Control Order. The Authority should also show that it has carried out activities to promote responsible dog ownership.

4.2 **Consultation with other Authorities**

I have received a response from two Local Authorities in the Cambridgeshire area

South Cambridgeshire District Council

They have not introduced any Dog Control Orders but their parish councils have introduced the Orders in certain areas. Therefore South Cambridgeshire District Council have not had any associated costs with introducing the Orders but they have undertaken the responsibility for handling complaints and issuing the Fixed Penalty Notices.

South Kesteven District Council

They have found the process to be very resource intensive, particularly around the necessary production of documentation. They also highlighted the issue of having limited resources available to ‘police’ orders. Ultimately this has led them to only introduce Orders which apply to fenced children’s play areas. In these play areas they have banned dogs completely.

4.3 **Compatible with Other Legislation**

The Dog Control Orders must be compatible with legislation released in 2006 called the Animal Welfare Act 2006. This legislation means that dog owners have a legal responsibility to allow their dogs to exhibit normal behaviour and patterns. This can include the opportunity to walk or run freely as well as providing a suitable diet, habitat etc. The introduction of a Dog Control Order should not force an owner to breach this act and a measured and balanced approach to give consideration to this would be required.

4.4 **Ability to Comply**

Consideration should also be given to those who may struggle to comply with an Order - an elderly person, for example. The Authority would have a duty to reach any dog owners who may be affected to supply advice and information. Careful consideration should also be given during the consultation process to any vulnerable groups that are less able to comply

4.5 **Giving Advice and Information on Compliance**

The Authority would have a duty to provide advice and information on how the public can comply with the Orders. This will require the production and release of an appropriate communication to households in the area most likely to be affected by the order.

Signage will also need to be produced for every area of land affected by the Orders. These signs will need to be placed at the entrance to the land and then at regular intervals within the area covered by the Orders.

4.6 **Environmental Impact**

The Authority has a Climate Change Department whose purpose is to promote initiatives to reduce Peterborough's carbon footprint. Consideration should be given to dog owners using their cars more frequently to travel to appropriate areas before being able to exercise their dogs.

5. **CURRENT STAFFING RESOURCES**

The following points are to give elected Members an overall picture of the duties currently undertaken by the Environmental Enforcement team.

5.1 **Dog warden**

One Dog Warden currently covers the local Authority area. He is employed to satisfy Peterborough City Council's statutory obligation under the Environmental Protection Act 1990 (Section 149). This states that a local authority must provide a service to collect stray dogs that are reported to it.

The Dog Warden's duties are very limited. His main role is to collect strays that are reported to Peterborough City Council which includes transporting animals between vets and to the kennelling facility. The warden also returns animals to their rightful owners (on payment of a fee). His role also includes replacing and erecting 'No fouling' signs but this is secondary to his main duties.

The Dog Warden does not currently have the delegated authority from Peterborough City Council to issue Fixed Penalty Notices.

5.2 **Neighbourhood Officers**

Neighbourhood Officers have the delegated authority to deal with dog fouling and issue Fixed Penalty Notices. Neighbourhood Officers are split into Neighbourhood areas and there are two Neighbourhood Officers that operate within North and West Peterborough.

Neighbourhood Officers are responsible for the co-ordination of the Street Leaders scheme. They also take part in arranging and attending many community engagement activities including street surgeries, problem solving groups, litter picking events and education events. This currently takes approximately 30% of their time.

Neighbourhood Officers also have the powers to enforce the following environmental legislation which accounts for the remaining 70% of their time.

Flytipping

Section 33 of the Environmental Protection Act 1990. Officers must gather evidence and conduct investigations into reports made by partner agencies and residents relating to the illegal disposal of waste.

Accumulations

Under Section 4 of the Prevention of Damage by Pests Act 1949 officers have a duty to investigate and arrange the removal of accumulations of waste that is likely to harbour or attract rodents. They also have a duty to serve notices on private land, open to public access, where fly tipping accumulates to ensure waste is cleared and to stop its re-occurrence.

Littering

Officers patrol their areas to tackle littering. This offence is dealt with by way of a Fixed Penalty Notice. They are also responsible for the serving of Litter Control notices to businesses who neglect their duty to clear litter from shop fronts.

Fly Posting

Fly posting is the illegal displaying of notices without consent in a public area. Officers are responsible for collating all the associated evidence before forming a case against the offenders.

Graffiti

Officers are tasked with investigating reports of Graffiti. Their duties are predominantly to work with those who have graffiti on private property, to encourage them to remove it. Owners who do not remove graffiti on their private property may be served with a Graffiti Removal Notice.

Duty of Care (Commercial Premises and Waste Carriers)

Officers must carry out annual inspections of businesses in Peterborough and investigate those that come to their attention through a variety of routes (referrals from other Peterborough City Council departments such Food Hygiene or Trading Standards for example). Neighbourhood Officers also work in conjunction with Cambridgeshire Police to conduct stop checks on vehicles transporting waste. This is to ensure companies have the correct Waste Carriers Licence.

Verge Parking

Neighbourhood Officers play a lead role in encouraging those responsible to stop damaging the verges through inappropriate parking. This requires a site visit to gather evidence and to meet with residents.

Misuse of Domestic and Commercial Bins

Section 46 of the Environmental Protection Act 1990 deals with the misuse of domestic bins. Neighbourhood Officers receive referrals from Enterprise (previously City Services) when residents do not comply with polite requests to use the waste collection service correctly. This is usually required where bins are not removed from public property after bin collection day, where recycling bins are continually contaminated with incorrect materials or where excess waste is placed out with the bin. A legal Notice is served on the occupants, visits are made to ensure compliance, and Fixed Penalty Notices of £100 are issued to those who breach the terms of the Notice. Section 47 of the same act relates to similar offences but in connection with commercial bins

Dog Fouling

As previously described Neighbourhood Officers were given the authority to issue Fixed Penalty Notices under the Dogs (Fouling of Land) Act 1996. Neighbourhood Officers will respond to reports of dog fouling as and when they are received and issue Fixed Penalty Notices for £50 when it is appropriate to do so.

6. **POTENTIAL COSTS**

6.1 **General Costs**

It is very difficult to give an accurate cost associated with introducing a Dog Control Order. However, the likely associated costs are

- Running public consultation events
- Producing documentation (maps, posters, public Notices, etc)
- Media and advertising (displaying public Notices, web site updates, newspaper advertising etc)
- Associated officer time (Neighbourhood Officers, Legal Services etc)
- Stationery and Signs
- Ongoing 'policing' of any Dog Control Orders (Officer
- Running events to promote responsible dog ownership

6.2 **Stationery and Signage Costs**

The following outlines the associated costs for stationery and signage. Quotes have been obtained through Peterborough City Council's preferred printing supplier.

Item	Amount	Cost
Redesign of Fixed Penalty Notices to include additional offence		£90
Printing Fixed Penalty Notice Pads	50	£300
Redesign of 'No Dog Fouling' signs to reflect legislation		£45
Printing 'No Dog Fouling' signs	50	£100
Producing metal 'No Dog Fouling' signs including fixtures	10	£330
Design 'Dogs Must be Kept on Leads' signs		£90
Printing 'Dogs Must be Kept on Leads' signs	50	£100
Producing metal 'Dogs Must be Kept on Leads' signs including fixtures	10	£330
Producing educational literature	100	£200

6.3 **Staffing Costs**

The main staff time associated with Dog Control Orders involves 'policing' any Orders that are introduced. An officer carrying out these duties could have the same delegated authority and powers as a Neighbourhood Officer.

The estimated cost of a full time employee in this role would be approximately £32,000 per annum (inclusive of all on costs). This does not include any other associated costs such as equipment or protective clothing.

7. **APPENDICES**

- 7.1 Appendix A : Kennel Club response to media article regarding PCCs consideration of DCOs. Includes information from a Freedom of Information request they submitted.
- 7.2 Appendix B : Dogs Trust response to media article regarding PCCs consideration of DCOs.

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