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| STRONG AND SUPPORTIVE COMMUNITIES SCRUTINY COMMITTEE | Agenda Item No. 6 |
| 9 NOVEMBER 2011 | Public Report |

Report of the Senior Neighbourhood Enforcement Officer, Regulatory Services

Contact Officer(s) – David Marshall, tel 863740

DOG CONTROL ORDERS

1. PURPOSE

- 1.1 This document sets out information regarding what is involved in instigating Dog Control Orders including the legal process, evidence base and staffing requirements, and potential costs. The Scrutiny Committee is asked to debate the subject to provide a recommendation on the way forward.

Information will also be supplied regarding the newly contracted Dog Warden Service with Midland Environmental Services Ltd aside from this report.

2. RECOMMENDATIONS

- 2.1 The Departments recommendations are that we continue to use current powers to tackle the problems faced in dealing with Dog Fouling.
- 2.2 Legislative changes are a potential. May 2011 saw a consultation period end regarding Anti Social Behaviour. Dog Control Orders are one of the areas that may change should the changes be implemented. It is recommended that we wait until a decision is reached on this subject before moving forward. Further information is supplied further in the document.

3. BACKGROUND

At the September 2010 Peterborough North Area Committee meeting it was agreed by the group that information would be required to inform a debate around whether or not Dog Control Orders are what is required in the Werrington area. Since then it has developed into whether it is appropriate city wide. Concerns were raised regarding the behaviour of dogs that were allowed by their owners to run around off the lead and that some owners were not picking up the fouling left by their dog.

3.1 LEGISLATION

Clean Neighbourhoods and Environment Act 2005

The relevant legislation is the Clean Neighbourhoods and Environment Act 2005.

Section 55 of the CNEA 2005 gives Local Authorities and Parish Councils the ability to install Dog Control Orders (DCO) to control a) fouling of land from dogs b) keeping dogs on leads c) the exclusion of dogs from land and d) the number of dogs a person can take onto land.

The order must clearly state what land is to be affected by the order and the times or periods during which an offence is to apply. The land that this Act applies to is any land which is open to the air and to which the public have access through payment or otherwise.

The Act under section 59 states that an authorised officer from the Local Authority can, when satisfied that an offence has taken place, issue a Fixed Penalty Notice. Section 60 of the Act states that the default amount of the FPN is £75 although there is the ability to charge what we wish (within reason).

Police Community Support Officers will also have the ability to issue FPNs for offences as per section 59 CNEA 2005.

Dogs (Fouling of Land) Act 1996

Peterborough is already covered under the Dogs (Fouling of Land) Act 1996. Any order installed prior to 2005 is still valid. When the CNEA 2005 came into operation it states that the Dogs (Fouling of Land) Act 1996 would cease to have effect. That means from 2005 onwards no further orders could be installed using Dogs (Fouling of Land) Act 1996. Peterborough's order was installed in 1998 and covers the entire city and communities within its boundaries. It was written in such a way that any expansion to the city or its boundaries would be covered, alternatively any reduction in boundaries would mean the land removed from Peterborough's boundaries would cease to be covered.

Other Considerations

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

It is suggested in the document that Dog Control Orders under the CNEA 2005 would be replaced by this new 'Community Protection Order'.

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

3.2 THE STATISTICS

Below is a break down of the calls for service received through the Environmental Enforcement Team and the Dog Warden Service in relation to those that would be impacted upon with a DCO.

| 2010/11* | Number of calls received |
|-------------------------|---------------------------------|
| Flytipping | 1586 |
| Accumulations | 732 |
| Duty of Care | 246 |
| Littering | 200 |
| Flyposting | 161 |
| Verge Parking | 97 |
| Section 46/47 | 62 |
| Graffiti Enforcement | 28 |
| Dog Fouling Enforcement | 12 |
| Dog Warden Service | 532 |

*dates 1/4/2010 – 31/03/2011

| 2011/12** | Number of calls received |
|-------------------------|--------------------------|
| Flytipping | 1167 |
| Accumulations | 551 |
| Abandoned Vehicles * | 219 |
| Littering | 139 |
| Duty of Care | 115 |
| Section 46/47 | 115 |
| Flyposting | 90 |
| Verge Parking | 22 |
| Graffiti Enforcement | 10 |
| Dog Fouling Enforcement | 8 |
| Dog Warden Service | 327 |

* began March 2011

**dates 1/4/2011 – 14/10/2011

3.3 POLICE STATISTICS

These statistics relate to Owner or person in charge allowing dog to be dangerously out of control in a public place injuring any person OR Owner or person in charge allowing dog to enter a non-public place and injure any person.

15 Incidents for Financial year 2010/2011

9 Incidents for this financial year to 1st October 2011

3.4 LEGAL PROCESS

As part of the research we have approached PCC Legal Services to request information on what process they would ask we follow in order to introduce a DCO. The process is described briefly below;

A. - A proposal has to be compiled setting out: 1) what offences are to be controlled by the order. There are 4 possible offences and each of these requires a specified form of words in order to be valid. The penalty and exemptions and defences should also be described; 2) 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 but there are some minor exemptions. A map can be used.

B. – it is not part of the legal process but at this stage it would probably be best to refer the matter to members for initial thoughts/ guidance on the proposal.

C. – [Subject to B] we must then begin consultation: i) with other possible DCO makers in the proposed area. This includes town or parish councils; ii) with the public by way of advertising in a local paper and also display/inspection of documents/maps. 28 days should be allowed as a minimum for responses to be received by us.

D. – the members must consider the proposal and all representations made and make a decision. The test is this: is the DCO a necessary and proportionate response to problems caused by activities of dogs and owners? There must be a balance between the interests of the public e.g. children and dog owners. The proposal can be approved [and the DCO made] or not approved. It can also be changed but if so then the consultation process has to be done again in full.

E. – members must decide when the DCO will come into effect and this will be a minimum of 14 days. At least 7 days before it comes into effect the DCO must be advertised in a local paper and be displayed for inspection and put on our website

F. – Notices warning of the DCO and offences must also be placed on or near to the land and at regular intervals within it [depending on the size of the land]

As you can see the process may take several months overall and will incur officer time in the preparation. Expenditure on advertising and notices will be incurred.

3.5 STAFFING INFORMATION

Neighbourhood Officers are responsible for:

1. Flytipping – under section 33 of the Environmental Protection Act 1990, Officers must conduct investigations into reports made by partner agencies and residents relating to the illegal disposal of controlled waste. Investigations require officers to gather evidence from many different sources which includes the conducting of PACE interviews.
2. 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 abatement notices on private land open to public access where Flytipping accumulates to ensure the waste clearance and to stop its re-occurrence.
3. Littering – Officers are tasked with patrolling the streets of Peterborough, mainly the centres and the City Centre to tackle the increasing problem of Littering. This offence is dealt with by way of Fixed Penalty Notice. They are also responsible for the serving of Litter Control notices to businesses who neglect their duty to clear litter from the shop fronts.
4. Flyposting – Officers deal with reports regarding advertisements of all different shapes, sizes and locations that are thought to be in place without advertising consent. Officers are responsible for collating evidence and from multi-national companies to sole traders regarding their illegal advertising activities. They can issue FPNs for minor offences or take legal action against those repeat offenders or where offences are deemed too serious for a FPN.
5. Graffiti – Officers are tasked with investigating reports of Graffiti. Their involvement in this mostly relates to working with those who have graffiti on their properties to encourage its removal. Failing to work with PCC to improve the amenity of the area can result in the service of a graffiti removal notice.
6. Duty of Care (Commercial premises) – Officers must carry out annual inspections of businesses in Peterborough and investigate those that come to their attention for various reasons (referrals from other PCC departments such as Food Hygiene, Trading Standards for example). We request the production of Waste Transfer Notes that prove legal disposal of trade waste. Failing to provide this results in £300 FPN or Court action.
7. Duty of Care (Waste Carriers) – Officers, in co-operation with Cambs Police, are tasked with conducting stop checks on vehicles transporting waste. The purpose of these are to request the production of a Waste Carriers Licence. Failing to produce results in a £300 FPN or Court.
8. Verge Parking – Although in most areas of Peterborough there are no powers to deal with this behaviour, Neighbourhood Officers are tasked with being PCCs lead team to investigate and encourage those responsible to stop damaging the verges. This requires a site visit to gather evidence and discuss with residents. Where possible, cases are referred to Highways for repair or where traffic orders are in place, to parking services to patrol and issue PCNs.
9. Section 46 Investigations – This is the domestic misuse of bins. Neighbourhood Officers must deal with those who do not comply with Enterprises' polite requests to use the service correctly. Intervention is required where bins are not removed from public property after bin collection day, where bins are continually contaminated with incorrect materials in recycling bin 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 FPNs of £100 are issued to those who breach the terms of the notice.
10. Section 47 Investigations – This is the commercial misuse of bins. Same offences and procedure as above.
11. Abandoned Vehicles – Investigate and arrange removal of abandoned and untaxed vehicles. Enterprise are our contractor for vehicle removal.

12. Dog Fouling – Neighbourhood Officers were given the authority to issue FPNs under the Dogs (Fouling of Land) Act 1996 when PCC stopped the Pest and Dog Control service. Given the level of involvement in the above tasks it is not often officers are able to pro-actively patrol parks and open spaces. Officers will respond to reports of Fouling as and when they are received. Offences are dealt with by way of £50 FPN.

4. KEY ISSUES

4.1 i) Whilst CNEA gives local authorities the power to introduce dog control orders, Defra's 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."

This means if the council cannot point to specific problems to answer questions raised by constituents to justify each order, this could be challenged in Court. If members are receiving these complaints they would need to record them and forward them on, its not enough to state we are receiving them; they need to be recorded in a durable and retrievable form. We would need to go through a long period of evidence gathering to find out whether there is an issue or not. We would also need to carry out events and activities to promote responsible dog ownership.

In summary the Council must produce evidence on request as to why dog control orders are considered necessary and proportionate e.g. what problems occur, how those with a responsibility for dogs have been accounted for.

ii) The need to consult with other Local Authorities. We have carried this out with neighbouring authorities, mainly in Cambridgeshire.

South Cambs District Council hasn't installed any themselves and left it to Parish Councils to install the DCOs. It therefore didn't cost them any money to install the order but are responsible for handling complaints and issuing the FPNs.

South Kesteven spoke of the process being very resource intensive in producing the documents; they also spoke of having limited resources available to 'police' orders. South Kesteven in the end went only for orders covering fenced off children's play areas and banning dogs from within them.

iii) The DCOs 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 i.e. walk/run freely, provide a suitable diet etc. Larger dogs that require more exercise for example would not be able to gain the required exercise if the owner can not release it from its lead we would therefore be forcing this person to breach the AWA 2006.

iv) Consideration must be given to those who may struggle to comply e.g. elderly people. Census information may potentially be used as a method of gaining a population break down from the local area where DCO is to be installed. We'd have a duty to reach those dog owners who would be affected to provide advice and information. This is also the group less likely to be involved in any consultation process.

v) Informing the General public on how to comply. This will require the production and release of literature, perhaps in the form of a leaflet to households in the area most likely to be affected by the order.

Signage will also need to be produced. Every entrance of the area of land affected needs to be signed to inform the public of the orders in place. Signs then need to be placed at regular intervals within the area covered by the orders.

vi) The promotion of different management approaches to educate dog owners and make provisions for dog owners and non dog owners without the need to extensive DCOs. An alternative for example would be to set aside a fenced area to allow dogs to be walked off the lead and exercised. It would also be a need to consider events that could be held in parks and open spaces to educate dog owners regarding responsible dog ownership.

vii) The environmental impact caused by greater numbers of dog owners using their cars if they lose access to suitable places to walk dogs nearby. The Council has a Climate Change Department whose purpose is to promote initiatives to reduce Peterborough and its residents carbon footprint. Installing an Order could be seen as going against the good work they are doing.

4.2 POTENTIAL COSTS

i) Its impossible to give accurate costs that may be involved; the costs of venues to display maps and documents for consultation, the production of maps and documents for consultation, media advertising (posters, newspaper adverts, production of web page etc), Officer time.

Given information regarding the authority needing to prove all reasonable steps have been explored prior to installing DCO, the costs of holding events to promote responsible dog ownership, which hasn't ever happened, also can't easily be determined.

ii) Stationary/Signage (approx costs).

Quotes obtained from PCCs printing supplier Danwood;

1. The re-design costs involved in updating the Fixed Penalty Notice pads to add an additional offence code - **£90**
2. The printing costs for Fixed Penalty Notice pads (50 Pads) - **£300**
3. The re-designing costs for the No Dog Fouling signs to reflect new legislation - **£45**
4. The printing costs for 'No fouling' on sticker format (50 signs) - **£100**
5. The costs involved in producing metal versions of the no fouling signs. (to include the metal brackets for affixing to street furniture). These would be displayed at all entrances to the area covered by DCO. (10 signs) - **£330**
6. The design of a new sign for 'dogs must be kept on leads' - **£90**
7. The cost of printing 'dogs must be kept on leads' on sticker format (50 signs) - **£100**
8. The cost of printing 'dogs must be kept on leads' on metal (to include metal brackets for affixing to street furniture). This would be displayed at the entrance to the area covered by DCO. - **£330**
9. The printing costs of a leaflet which would be written and designed by PCC Officer and passed to Danwood for printing (100 leaflets)- **£200**

iii) In view of the information I believe this is a full time job for someone similar to that of an Animal Welfare Officer. They can co-ordinate PCCs efforts in holding events and if then required installing and co-ordinating the installation of DCOs.

The new staff member could also have the delegated authority similar to that of a Neighbourhood Officer to ensure effective policing of the orders. Staff of this nature are on a minimum of Grade 9 on the Councils pay scale (**£24k-27k** per annum). Inclusive of On Costs this amount will increase to somewhere in the region of **£31,748**.

This also does not cover any other associated costs such as equipment and uniform purchase.

Funding for this post would need to be found.

5. CONSULTATION

5.1 This has been discussed and presented to the Peterborough North Area committee. They have asked that it be presented to the Strong and Supportive Scrutiny Committee.

6. NEXT STEPS

6.1 After scrutiny committee debate we will consider changes in Service Delivery.

6.2 Report back to Peterborough North Area Committee

6.3 Discuss with the Cabinet Member

7. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

7.1 None

8. APPENDICES

8.1 Appendix A: Kennel Club response to media article regarding PCCs consideration of DCOs. Includes information from a Freedom of Information request they submitted.

8.2 Appendix B: Dogs trust response to media article regarding PCCs consideration of DCOs.

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