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| REPORT TO:              | ENVIRONMENTAL & DEVELOPMENT SERVICES    | AGENDA ITEM: 11            |
| DATE OF MEETING:        | 3 <sup>rd</sup> JUNE 2008               | CATEGORY: RECOMMENDED      |
| REPORT FROM:            | DIRECTOR OF COMMUNITY SERVICES          | OPEN                       |
| MEMBERS' CONTACT POINT: | JACK TWOMEY                             | DOC:                       |
| SUBJECT:                | DOG CONTROL ORDERS FOR SOUTH DERBYSHIRE | REF:                       |
| WARD(S) AFFECTED:       | ALL                                     | TERMS OF EDS 14 REFERENCE: |

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## **1.0 Recommendations**

- 1.1 To approve the proposal for a Dog Control Order (DCO) to be consulted upon in line with the DCO Regulations and then set up to cover all publicly accessible areas of South Derbyshire in relation to the offence of **dog fouling**.
- 1.2 To approve the proposal for a number of separate DCOs in the areas for which Parish Councils have stated they want them. Commencement of the DCOs to commence as soon as possible following consultation period unless significant adverse comments received (for which the matter will be referred back to this committee for a decision).

## **2.0 Purpose of Report**

- 2.1 To advise Members of the ability to set up DCOs within the district and how this can be achieved.
- 2.2 To request approval from Members regarding the setting up of a District wide DCO specifically for dog fouling which will cover all publicly accessible areas and will entirely replace the current offence under the Dogs (Fouling of Land) Act 1996.
- 2.3 To request approval to proceed with the consultation process to enable a number of DCOs to be set up in various Parishes. These are for the exclusion of dogs from certain areas and a requirement to keep dogs on leads whilst on certain areas.

### **Detail**

## **3.0 Dog Control Orders – Overview of Legislation and set up process**

- 3.1 A Dog Control Order (DCO) is a new piece of legislation that came into force in 2006. DCOs made under the Clean Neighbourhoods and Environment Act 2005 replace the previous system of byelaws for the control of dogs and also the Dogs (Fouling of Land) Act 1996, which has been repealed, although existing Orders remain in force until replaced.

- 3.2 The Clean Neighbourhoods and Environment Act 2005 was introduced to tackle low level environmental crime and nuisance such as litter and fly-posting. It seeks to give communities the power to control these problems and enables Councils to carry out enforcement in a quick and efficient manner by issuing fixed penalty notices.
- 3.3 Under the new legislation, Primary (District Councils) or Secondary (Parish Councils) Authorities have the ability to make DCOs within their area.
- 3.4 The list of potential DCOs which may lead to an offence for which a fixed penalty notice can be served are as follows:
- Dog fouling
  - Failure to keep a dog on a lead
  - Exclusion of dogs from land
  - Taking more than a specified number of dogs onto land
  - Not putting, and keeping, a dog on a lead when directed to do so by an authorised officer
- 3.5 The penalty for committing an offence contained in a DCO is a maximum fine of level 3 on the standard scale (currently £1000). Alternatively, the opportunity to pay a fixed penalty may be offered in place of prosecution, in line with the Council's policy on the use of fixed penalty notices.
- 3.6 Existing byelaws and the Dogs (Fouling of Land) Act 1996 are not affected by the introduction of the new system until such a time as a DCO is in force to replace them. Therefore at present, in relation to dog fouling, Wardens are continuing to serve fixed penalties under the Dogs (Fouling of Land) Act 1996.
- 3.7 The Secretary of State has the power to designate types of land to which DCOs are NOT to be applied. Currently there are only two exemptions:
- Forestry commission land
  - Roads (including highways) in respect of a DCO for the exclusion of dogs from land
- 3.8 In relation to the exclusion regarding roads listed above, the term "road" has a wide definition which includes not only public rights of way, including footpaths, but also ways to which the public has access by permission of the landowner, rather than by right. It therefore includes roads and footpaths through private estates provided the public has access to them. Please note that this only covers the DCO excluding dogs from land. The other potential DCOs can still be made for a "road".
- 3.9 Prior to a DCO coming into force, the Dog Control Orders (Procedures) Regulations require a period of consultation. This includes consultation with the public, via our website and through advertisements in the Burton Mail and Derby Evening Telegraph, plus consultation with the relevant Parish Council and other relevant authority (e.g. Highway Authority, Forestry Commission, the Local Access Forum, etc.). We must consider the responses and it is proposed to only come back to this committee should there be significant and relevant objections to a DCO for a decision to be made. Where there are no adverse comments it is recommended that the DCO be commenced at the earliest opportunity.

## 4.0 Dog Control Orders in South Derbyshire

- 4.1 Both Parish and District Councils can make their own Dog Control Orders. However, the mechanisms and staff must be in place to enforce the Orders. Whilst a Parish Council could authorise the District Council's Safer Neighbourhood Wardens to act on their behalf, it would potentially lead to administrative difficulties.
- 4.2 With the District Council employing three Safer Neighbourhood Wardens it is considered a better proposal to authorise them to enforce all DCOs, which will be set up by ourselves, not the Parish Councils. No adverse comments from Parish Councils have been received in relation to this proposal.
- 4.3 The proposed DCOs are aimed at balancing the interests of dog owners and the rest of the public. The proposed Orders seeks to provide areas where dogs can be exercised off the lead and areas where the public and particularly children can play safely and free from contact with dog waste. We hope to achieve this balance via the public consultation we must carry out, however, it is not envisaged that we will receive much in the way of representations in relation to the blanket order for dog fouling which covers the whole district.
- 4.4 In the interests of clarity, this report has two elements to consider. The first part is a proposal to create one DCO for the offence of dog fouling which is to cover the entire district in the relevant locations. The locations covered are any land open to the air to which the public has access (with or without payment), discounting the exemptions detailed in sections 3.7 and 3.8 above. Land is considered to be "open to the air" if it is open on at least one side (e.g. a bus shelter).
- 4.5 The main difference between the old Dogs (Fouling of Land) Act 1996 and the proposed new DCO for fouling is that it would make it an offence in certain areas where it was not an offence previously. For example, it was not an offence to allow dogs to foul adjacent to a road where the speed limit was more than 40 mph. Clearly, there are potentially areas where fouling would still be unacceptable and the new DCO would address this. Additionally, the maximum fixed penalty notice fine amount would become £75, with a discount to £50 for early payment, rather than the standard £50 under the Dogs (Fouling of Land) Act.
- 4.6 The second element of this report which needs consideration is the proposed DCOs for certain areas of land various Parishes. These areas and their proposed DCO offence are as follows:

### Woodville

- Failure to keep a dog on a lead for Woodville Recreation Ground
- Exclusion of dogs from the recreation ground's Multi-Use Games Area (hard standing surrounded by fencing).
- Exclusion of dogs from Blueberry Way play area
- Exclusion of dogs from the play area between Moira Road and Excelsior Drive
- Exclusion of dogs from Woodville Cricket Ground

### Repton

- Exclusion of dogs from the Mitre playing field
- Failure to keep a dog on a lead on Broomhills Recreation Ground

## Etwall

- Exclusion of dogs from Chestnut Grove play area

## Rosliston

- Failure to keep a dog on a lead on Rosliston Primary School playing field
- Failure to keep a dog on a lead on the Recreation Ground of Main Street
- Failure to keep a dog on a lead on Strawberry Lane Sports field

4.7 All Parish Councils have been consulted in relation to land within their district which they may wish to assign a DCO (other than fouling) to. It was the original intention to take all proposed DCOs to one committee and then proceed to consult on them all. However, some Parish Councils have been quicker in providing this information and it would be unfair to penalise them. Hence it is likely that a further report will go to the August Environmental and Development Services committee for further DCOs in other Parishes.

## **5.0 Financial Implications**

5.1 As with other offences which are enforced by the Safer Neighbourhood Wardens, the income generated from fixed penalty receipts for offences can be used to tackle the offence to which it relates. The Council will have to purchase signage to erect around land to which a DCO relates and in future the cost of this will be borne out of fixed penalty receipts.

5.2 The increase in potential offences, coupled with the slight increase in fine for the fouling offence will improve the financial position for dealing with these offences, for which fouling in particular is considered unacceptable and high on the priority list for many residents of South Derbyshire.

## **6.0 Corporate Implications**

6.1 The proposals enable minor environmental offences to be dealt with expediently and with impact, whilst preventing the need to take the matter to court, thereby saving officer time and ensuring efficiency.

## **7.0 Community Implications**

7.1 We want 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.

## **8.0 Conclusions**

8.1 Dog Control Orders provide the opportunity to create a number of different offences on relevant land.

8.2 The proposal for a fouling DCO to cover all publicly accessible places within the district generally reflects the current system but goes further and it is undoubtedly something which the vast majority of the residents of South Derbyshire would wish for.

8.3 The implementation of the other proposed DCOs in certain areas will improve the standard of these areas in terms of fouling and also enable children to play without interference from dogs running loose whilst on the recreation grounds and other play areas.

## **9.0 Background Papers**

9.1 Environmental Health Enforcement Policy and Fixed Penalty Notice Appendix.