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<b>REPORT TO:</b>	<b>Environmental and Development Service Committee</b>	<b>AGENDA ITEM: 7</b>
<b>DATE OF MEETING:</b>	<b>31<sup>st</sup> May 2012</b>	<b>CATEGORY: RECOMMENDED</b>
<b>REPORT FROM:</b>	<b>Mark Alflat – Director of Community Services</b>	<b>OPEN</b>
<b>MEMBERS’ CONTACT POINT:</b>	<b>Matt Holford – Environmental Health Manager</b>	<b>DOC:</b>
<b>SUBJECT:</b>	<b>Revision of the South Derbyshire Dog Control Order</b>	<b>REF:</b>
<b>WARD(S) AFFECTED:</b>	<b>All</b>	<b>TERMS OF REFERENCE: EDS14</b>

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## **1. Recommendations**

- 1.1 That Members consider the proposed changes at 3.15 to the existing Dog Control Order (DCO) arising from the consultations with Parish Councils and others as well as the evidence to support these proposed changes.
- 1.2 That, based on the statutory guidance, Members determine the changes they would like to make to the existing DCO and instruct officers to commence the due legal process to more widely consult on these proposed changes.
- 1.3 That Members endorse the revision of the existing DCO where there is a majority of support for the proposed change.
- 1.4 That Members consider a further report on specific sites where there is a majority of opposition to the proposed change.

## **2. Purpose of Report**

- 2.1 To advise Members of the statutory framework for controlling dogs in public places and of the contents of the existing South Derbyshire Dog Control Order.
- 2.2 To advise Members of the proposed changes to the Dog Control Order arising from a recent consultation process.
- 2.3 To present Members with the statutory guidance on the factors to be considered when declaring a DCO.
- 2.4 To present Members with officer opinions and recommendations in response to the proposals made during the consultation.

## **3 Detail**

- 3.1 Part 6 of the Cleaner Neighbourhoods and Environment Act 2005 is concerned with local authority powers to control dogs. The Act gives powers to Primary Authorities

(District and Metropolitan authorities) and Secondary Authorities (Parish Councils) to issue Dog Control Orders which can stipulate specific dog related offences on specific areas of land. The offences for which DCOs may be declared are for the failure of a dog owner to clean up after its dog has fouled, the failure of an owner to keep a dog on a lead, the failure of a dog owner to keep its dog out of an area from which dogs are excluded and for a single dog walker to have more than a specified number of dogs under their control.

- 3.2 The purpose of the legislation is to give Primary and Secondary Authorities the power to ensure that the rights of dog owners and non dog owners on public land are balanced. In other words to ensure that the potential nuisance associated with dog faeces or intimidation by loose dogs is controlled whilst ensuring that dog owners have access to sufficient land to exercise their pets.
- 3.3 Before a Primary or Secondary Authority can declare or revise a DCO it must follow a statutory process that is defined in Regulations made under the Cleaner Neighbourhoods and Environment Act. This procedure consists of publishing the proposals in a local newspaper, allowing a minimum of 28 days for responses to the proposals, giving due consideration to all responses and then issuing an Order which brings into force the Order or any variations of it.
- 3.4 Statutory guidance was issued in 2006 by DEFRA to assist Primary and Secondary Authorities to determine which areas of land should be declared within a DCO. The key considerations are;
- “It is important for any authority considering a Dog Control Order to be able to show that this is necessary and proportionate response to problems caused by the activities of dogs and those in charge of them” (paragraph 29),
  - “Authorities should...consider how easy a Dog Control Order would be to enforce, since failure properly to enforce could undermine the effect of an order”. (paragraph 31).
- 3.5 Failure to comply with a DCO is an offence for which a Fixed Penalty Notice can be issued (£50), or prosecution proceedings taken which can result in a maximum fine up to £1000.
- 3.6 The current Dog Control Order applies to the whole of South Derbyshire. The following are offences under the Order;

**Failure to remove dog faeces in:**

- The entire district of South Derbyshire in areas open to the air and accessible to the public, subject to certain exemptions, and including access land as defined by the Countryside and Rights of Way Act 2000.

**Not keeping a dog on a lead in:**

- Badgers Hollow Recreation Ground, Coton Park
- Broomhills Recreation Ground, Repton
- Church Gresley Cemetery
- Eureka Park, Midway
- The Mease Football Pitch, Hilton
- Main Street Recreation Ground, Linton

- Maurice Lea Memorial Park, Church Gresley
- Newhall Cemetery
- Newhall Park
- Recreation Ground off Main Street, Rosliston
- Rosliston Primary School playing field
- Strawberry Lane Sports Field, Rosliston
- Swadlincote Woodlands Park
- Village Hall Picnic Area, Hilton
- Woodville Recreation Ground

**Dogs excluded:**

- Multi-use Games Area and Play area on Woodville Recreation Ground
- Play Area on Blueberry Way, Woodville
- Play Area on Excelsior Drive, Woodville
- Woodville Cricket Ground
- The Mitre Recreation Ground, Repton
- Chestnut Grove Play Area, Etwall
- Scropton Recreation Ground adjacent to St. Paul's Church
- Children's play area at the Village Hall, Hilton
- Children's play area at Avon Way, Hilton
- Children's play area off Main Street, Hilton
- Children's play area off Arthur Street, Castle Gresley
- Football pitch off Mount Pleasant Road, Castle Gresley

3.7 The Dog Control Orders are enforced by the Council's Safer Neighbourhood Wardens along with their other duties relating to flytipping, anti-social behaviour control, noise nuisance investigation, abandoned vehicles and stray dog control. Enforcement is undertaken both through response to discrete complaints about non compliance with the Orders and through proactive patrols of the DCO areas.

**Consultation Responses**

3.8 In autumn 2011 a consultation was undertaken on the website to establish if there were any strong views amongst South Derbyshire residents for changes to the DCO. Only 9 consultation responses were received and all of the proposed changes to the Order were outside the scope of the Cleaner Neighbourhoods and Environment Act. At the same time a 120 signature petition was received specifically requesting a relaxation of the DCO in Eureka Park.

3.9 In early 2012 directed consultations were undertaken with all Parish Councils in South Derbyshire. A total of seven Parish Councils responded with proposed changes to the DCO within their areas. Further consultations were undertaken with these Parishes to seek from them further information to support the changes they proposed. Two Parishes responded with supporting information.

3.10 A consultation was also undertaken with the Open Spaces and Facilities Development Officer to determine her views on the proposals. This resulted in an alternative proposal to that contained in the 120 signature petition – namely the relaxation of the Order in Swadlincote Woodland to permit dogs to be allowed off the lead other than in the child play area, within which dogs would be excluded.

## **Assessment of the Proposed Changes**

- 3.11 As discussed in paragraph 3.4, before amending a DCO, the Council must satisfy itself that the changes are 'necessary and proportionate' as well as being enforceable. There is no explicit method by which to make these judgements and therefore a simple assessment matrix has been developed by which to assess whether the proposals meet the 'necessary and proportionate' test.
- 3.12 In summary this consisted of rating each of the parcels of land to which the DCO proposals apply as being of high, medium or low amenity for dog owners and non dog owners respectively. This has been used to indicate where the balance of interests lies for each land parcel.
- 3.13 The recommendations presented to Members are based on this balance of interests and further consideration has also been given to the other test of the enforceability of the proposed change to the DCO.
- 3.14 The proposed changes and the assessed balance of interests are summarised in Appendix A.

## **Proposals**

- 3.15 The existing requirements of the Dog Control Order as described in 3.6 will be retained and the Order is proposed to be amended to make the following changes:

To make it an offence within the DCO to fail to exclude a dog from the following land;

- Children's play area and MUGA, Scropton Road Sports Ground, Hatton;
- Multi-use games area and children's play area at Salisbury Drive, Hartshorne;
- Multi-use games area at Gosley Recreation Ground, Hartshorne;
- Fenced children's play area on the King George V playing field, Etwell;
- Recreation ground in Coton on the Elms;
- Children's play area, Swadlincote Woodlands Park.

To make it an offence within the DCO to fail to keep a dog on a lead on the following land;

- Catherine Jonathon Playing Fields, Eggington;
- Mount Pleasant Road children's play area, Castle Gresley;
- Hall Lane children's play area, Willington;
- Trent Avenue children's play area, Willington;
- Gosley Recreation Ground, Hartshorne;
- Main Street recreation ground, Hartshorne

To no longer make it an offence to fail to keep a dog on a lead on the following land;

- Swadlincote Woodlands Park

- 3.16 The offence of failing to remove dog faeces from in areas open to the air and accessible to the public will remain in force.

3.17 It is further proposed to undertake a formal public notification process in accordance with the Dog Control Order (Procedures) Regulations 2006 prior to the final decision to make the changes to the DCO detailed in paragraph 3.15.

#### **4. Financial Implications**

4.1 The enforcement of the revised DCO will be undertaken by the existing team of 3 Safer Neighbourhood Wardens. One of the common comments to come out of the consultation exercise was a general perception that the existing DCO is not being enforced. The Safer Neighbourhood Warden service already faces significant demands which limits the time available for Wardens to spend patrolling all of the public open land in the 340 squared kilometre area of the district. Therefore the additional DCOs are likely to increase the expectation that the DCO will be robustly enforced, but further reduce the time available to patrol each site. Never the less the overall impacts of the additional land parcels within the Order are not likely to put a significant further strain on the service and therefore no additional resourcing implications are anticipated.

4.2 The changes will require additional signage to be put up at the relevant sites with an estimated cost of £1000. This will be covered within existing budgets.

4.3 The changes to the DCO may generate some additional income as a result of an increase in Fixed Penalty Notices. The Wardens currently issue relatively few FPNs, primarily because dog owners tend to adhere to the terms of the Order whenever the Wardens are present. No additional significant income is expected to result from the revisions to the DCO.

#### **5. Corporate Implications**

5.1 The proposals align with the “safe and secure” Corporate Plan Objective and the “safer communities” long term outcome. The proposals help deliver against the Corporate Plan key projects SP05 for 2012/13 – refocus the Safer Neighbourhood Wardens on the prevention of anti-social behaviour and enviro-crime.

5.2 The proposals also align with the ‘lifestyle choice’ Corporate Plan Objective and the ‘delivering community based cultural and recreational activities that promote a healthier lifestyle’ long term outcome. Specifically the proposals are relevant to Corporate Plan key project LP02 ‘Deliver improved leisure facilities for the community’.

#### **6. Community Implications**

6.1 The proposals will not change existing services.

#### **7. Conclusion**

7.1 The South Derbyshire Dog Control Order needs to balance the interests of dog owners with those of non dog owners in order that the community as a whole can maximise the use of public open space. The proposed changes to the Order are deemed to be a necessary, proportionate and enforceable means of achieving this outcome.