



REGENERATION AND ENVIRONMENT SCRUTINY COMMITTEE - 19TH FEBRUARY 2013

SUBJECT: DOG CONTROL ORDERS

REPORT BY: CHIEF EXECUTIVE

1. PURPOSE OF REPORT

- 1.1 Members have previously recommended the making of Dog Control Order to exclude dogs from enclosed children's play areas and Multi Use Games Areas (MUGAs). Members have requested a Report to allow consideration of the merits of making Dog Control Orders in respect of other public spaces.

2. SUMMARY

- 2.1 All recreational land within the County Borough has been designated under the Dogs (Fouling of Land) Act 1996 making it an offence for a person to fail to clean up after their dog on such land. Local Authorities are also empowered to introduce Dog Control Orders which allow for additional offences by excluding dogs from certain land or requiring that they are kept on a lead.
- 2.2 Dog Control Orders provide an opportunity for greater protection against the anti-social aspects of dog ownership exhibited by an irresponsible minority. Following a public consultation process Members' previous recommendation regarding the making of a Dog Control Order to exclude dogs from enclosed children's play areas and Multi Use Games Areas (MUGAs) is to be considered by Cabinet on 19th February 2013. This Report seeks Members' views on the merits of introducing Dog Control Orders in respect of other public spaces.

3. LINKS TO STRATEGY

- 3.1 Improving the look and feel of our streets and parks, and making Caerphilly a safer place to live and work are current priorities within the Corporate Improvement Plan.

4. THE REPORT

- 4.1 Living Environment Scrutiny Committee considered a Report in March of this year and endorsed proposals to progress the introduction of a Dog Control Order which would have the effect of excluding dogs from enclosed children's play areas and MUGAs. The Committee was informed that in the 2011 Household Survey 49% of respondents felt that dog fouling was a big problem in their neighbourhood and local town centre. As well as being unpleasant dog fouling presents a particular public health concern in that the eggs of the roundworm toxocara may be present in the faeces of infected dogs.

- 4.2 In 1997 Caerphilly County Borough Council adopted powers under the Dogs (Fouling of Land) Act 1996 to prevent fouling of public land by dogs. All recreational parks land is covered by the legislation. If a dog fouls on designated land and a person who is in charge of the dog fails to remove the faeces that person is guilty of an offence provided that he or she has no reasonable excuse. A person convicted of an offence under the Act is liable to a fine of up to £1,000. Alternatively, the opportunity to pay a fixed penalty may be offered in place of prosecution. The current fixed penalty is £75, which is discounted to £50 if paid within 14 days. 84 Fixed Penalty Notices were issued for dog fouling and 8 prosecutions were heard by the Courts during 2012.
- 4.3 Local authorities, Community and Town Councils may make Dog Control Orders, providing that they are satisfied that an order is justified and have followed the necessary procedures. Under the Clean Neighbourhoods and Environment Act 2005 a Dog Control Order can be made in respect of any land which is open to the air and to which the public are entitled or permitted to have access (with or without payment).

There are five offences which may be prescribed in a Dog Control Order:-

- (i) Failing to remove dog faeces;
- (ii) Not keeping a dog on a lead;
- (iii) Not putting and keeping a dog on a lead when directed to do so by an authorised officer;
- (iv) Permitting a dog to enter land from which dogs are excluded;
- (v) Taking more than a specified number of dogs onto land.

The penalty for committing an offence contained in a Dog Control Order is a maximum fine of £1,000. Alternatively, the opportunity to pay a fixed penalty may be offered in place of prosecution. Local Authorities can specify the amount of fixed penalty in relation to their own Dog Control Orders and are also able to allow for the payment of a lesser amount if the fine is paid within a specified time period. Where no local amount is specified, the fixed penalty is set at £75.00.

- 4.4 The Dog Control Orders (Miscellaneous Provisions) (Wales) Regulations 2007 prescribe the procedure for making a Dog Control Order. It is important for any Authority considering a Dog Control Order to be able to demonstrate such an Order is a necessary and proportionate response to problems caused by the activities of the dogs and those in charge of them. The Council needs to balance the interests of those affected by the activities of dogs, bearing in mind the need for parks users, 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 restriction. Any failure to give due consideration to these factors could make any subsequent Dog Control Order vulnerable to challenge in the courts.
- 4.5 In some areas Friends Groups have been established which support the Council in managing and enhancing our parks. The members of those Groups, many of whom are dog walkers, act as “eyes and ears” reporting incidents and issues to the Council for our attention. The Council would not wish to lose any of their support.
- 4.6 Dog ownership can promote physical and mental well being, increasing physical activity and providing companionship. Welsh Government estimates that there are 450,000 dogs in Wales, the majority of which are kept by responsible owners. If it is accepted that responsible dog owners should generally have free access to appropriate public open space in order to enjoy and exercise their dogs then our parks are able to offer significant areas for dog walking.

- 4.7 Where a Dog Control Order applies to an area of land, appropriate signage must be erected informing the public of the effect of the order and the cost associated with this would depend on the number and nature of locations covered.
- 4.8 Local Authorities are also advised to consider how easy a Dog Control Order would be to enforce, since failure to properly enforce could undermine the effect of an order. This is particularly the case for orders that exclude dogs completely from an area of land. These will be easier to enforce if the land is enclosed. However, Welsh Government guidance advises that such orders should not be ruled out for unenclosed land where a special case for them can be made an dog free sections of beaches is the example given.
- 4.9 Before it can make a Dog Control Order the Council must consult upon its proposals and consider any representations that have been made. A public consultation exercise was undertaken during September of last year in relation to the proposal to exclude dogs from enclosed children play areas and MUGAs. There were 33 responses to the public consultation. 24 (92%) of respondents who expressed a preference were in favour of the proposal and 2 were against. Of the 24 respondents supporting the proposals 5 felt that the proposals should go further: 2 were in favour of the exclusion of dogs extending to sports pitches; 1 was in favour of extending the exclusion to school fields; 1 was in favour of extending to include both sports pitches and school fields; and 1 stated that dogs should be kept on leads in all public places. More recently a number of enquiries have been received from the public concerned that the Council's intention is to exclude dogs from wider park areas.
- 4.10 Dog Control Orders and in particular dog fouling has featured regularly in discussions at previous Scrutiny Committee meetings. In relation to dog fouling Members should consider whether they are satisfied that existing controls are sufficient given that failure to remove dog faeces is already an offence as detailed in paragraph 4.2 above. Alternatively, Members may consider that additional controls offered by Dog Control Orders as detailed in paragraph 4.3 above are appropriate and in previous discussions on this subject at Scrutiny Committee playing fields, sports pitches and public gardens have all been mentioned.
- 4.11 The Council operates approximately 95 sports pitches, which are marked with white lines for rugby, football and cricket. All pitches are used seasonally and the application of any Order during the off-season should be considered. In the absence of a fence or enclosure Members may wish to consider whether the public would have sufficient certainty about the effect and extent of any Order applying to sports pitches. Approximately 18 schools have sports pitches and could be subject to a Dog Control Order where there is public access; the school would be included in the consultation process. The Council also has a number of fenced memorial gardens and approximately 25 unfenced gardens, which are open to the general public. In addition the Council has 28 public gardens, some fenced and some unfenced. The Council manages 10 cemeteries and the current Cemetery Regulations (which were approved by Cabinet) prohibit dogs from them, with the exception of guide and prescribed assistance dogs.
- 4.12 Members are asked to consider whether further Dog Control Orders in respect of these public open spaces are a necessary and proportionate response to the problems caused by the activities of the dogs and the small minority of those in charge of them that act irresponsibly having regard to likely enforceability.

5. EQUALITIES IMPLICATIONS

- 5.1 The Dogs (Fouling of Land) Act 1996 does not apply to any person who is registered blind. Dog control orders provide exemptions in particular cases for registered blind people, deaf people and for other members of the public with disabilities who make use of trained assistance dogs.

6. FINANCIAL IMPLICATIONS

- 6.1 Where a Dog Control Order applies to an area of land, appropriate signage must be erected informing the public of the effect of the order and costs would therefore depend on the number of signs required. Whilst existing Enforcement Officers would be responsible for enforcing any new Orders it may be necessary to review the level of staffing resource available in the light of operational experience. There may be some additional income to the Council as a result of fines received from Fixed Penalty Notices.

7. PERSONNEL IMPLICATIONS

- 7.1 Any additional restrictions imposed by Dog Control Orders may increase the potential for staff to be placed in confrontational situations. It would be important to ensure that the necessary training and procedures are in place so that staff are able to assist park users with their expectations in relation to enforcement of the Orders.

8. CONSULTATIONS

- 8.1 There are no consultation responses that have not been reflected in this report.

9. CONCLUSIONS

- 9.1 The proposed Orders to exclude dogs from enclosed playgrounds and MUGAs has generally been well received. Whilst in the consultation a small number of respondents felt that the exclusion should go further a larger number of enquiries have since been received from responsible dog owners concerned that the exclusion will extend further thus penalising them for the actions of a small minority of irresponsible dog owners.

- 9.2 In conclusion, the potential advantages of making an Order to exclude dogs from sports pitches are:-

- The incidence of fouling on sports pitches may be reduced.
- It provides enforcement officers with another legal "tool".
- It sends a clear message regarding the Council's commitment to promoting responsible dog ownership.

The potential disadvantages are:-

- The difficulties of enforceability.
- The confusion for members of the public if sports fields are designated while other open parks areas are not.
- The potential loss of support of Parks Friends Groups, which are a key aspect in obtaining green flag designation for a park.
- The potential effect on health if dog walking in public open spaces was positively discouraged.

10. RECOMMENDATIONS

- 10.1 Members views are sought on the further use of Dog Control Orders within the County Borough.

11. REASONS FOR THE RECOMMENDATIONS

- 11.1 To provide Members with the opportunity to offer their views on the further use of Dog Control Orders within the County Borough.

12. STATUTORY POWER

- 12.1 Section 55 of the Clean Neighbourhoods and Environment Act 2005.

Author: Rob Hartshorn, Head of Public Protection
Consultees: Cllr. D.V. Poole, Cabinet Member for Community and Leisure Services
Cllr. D.T. Davies, Chair Regeneration and Environment Scrutiny Committee
Cllr. E.M. Aldworth, Vice-Chair Regeneration and Environment Scrutiny Committee
Anthony O'Sullivan, Chief Executive
Mark S. Williams, Head of Community and Leisure Services
Derek Price, Parks and Outdoor Facilities Manager
Ceri Edwards, Environmental Health Manager
Kath Peters, Community Safety Manager
D. Perkins, Head of Legal and Governance
J. Jones, Democratic Services Manager
D.A. Thomas, Senior Policy Officer (Equalities and Welsh Language)

Background Papers:

Welsh Government Guidance on Section 55 to 67 of the Clean Neighbourhoods and Environment Act 2005;
2011 Household Survey;
Report to Living Environment Scrutiny Committee of 20th March 2012 entitled 'Dog Control Orders';
Report to Regeneration and Environment Committee of 11th December 2012 entitled 'Dog Control Orders';
Report to Cabinet of 19th February 2013 entitled 'Dog Control Orders'.