

CHESHIRE EAST COUNCIL

Cabinet Member for Environmental Services

Date of Meeting: 30th April 2012
Report of: Head of Community Services
Subject/Title: Proposed Dog Control Orders for The Carrs, Wilmslow
Portfolio Holder: Councillor Rod Menlove

1.0 Report Summary

- 1.1 This report provides details in relation to the statutory powers to make 'dog control orders' and requests that the Cabinet Member considers making certain dog control orders in relation to specified areas of land at The Carrs in Wilmslow.

2.0 Recommendations

- 2.1 The Cabinet Member for Environmental Services is requested:

- 2.1.1 subject to statutory consultation, to approve the making of

- (a) a 'Fouling of Land by Dogs Order' in relation to the area of land known as The Carrs, Wilmslow, shown edged in red on the plan attached as Appendix A;
- (b) a 'Dogs (Specified Maximum) Order' in relation to the area of land known as the Carrs, Wilmslow, shown edged in red on the plan attached as Appendix A;
- (c) a 'Dogs on Leads Order' in relation to the area of land at The Carrs, Wilmslow shown hatched in black and on the plan attached as Appendix B; and
- (d) a 'Dogs on Leads by Direction Order' in relation to the area of land at The Carrs, Wilmslow shown hatched in black on the plan attached as Appendix C.

- 2.1.2 to authorise the Borough Solicitor, or officer acting on her behalf, to publish notice of the proposed orders within paragraph 2.1.1 (a) – (d) above, with any objections to be made within the statutory consultation period of twenty-eight days. In the event that objections are received in relation to any of the proposed orders, for these objections to be referred back to the Cabinet Member for consideration at a future meeting.

- 2.1.3 in the event that no objections to any of the orders proposed within paragraph 2.1.1 (a) – (d) above are received, or if any such objections are withdrawn, to authorise the Borough Solicitor, or officer acting on her behalf, to make and bring into force the orders and to give notice thereof in accordance with statutory requirements.
- 2.1.4 subject to the statutory consultation in relation to the proposed orders, to determine that the level of fixed penalty notice in relation to offences under the proposed dog control orders will be £75.

3.0 Reasons for Recommendations

- 3.1 The proposals have been submitted in response to complaints received by the Council relating to issues arising from the presence of dogs on the Carrs in Wilmslow.

4.0 Wards Affected

- 4.1 Wilmslow West and Chorley

5.0 Local Ward Members

- 5.1 Councillor Gary Barton and Councillor Wesley Fitzgerald

6.0 Policy Implications including - Carbon Reduction, Health

- 6.1 The Council's Corporate Plan (2011- 2013) specifies the corporate objective of enhancing the Cheshire East environment, which includes the aim of "providing clean and well-maintained streets, public spaces" and protecting "our heritage, natural and recreational environment for the benefit of local communities."

7.0 Financial Implications (Authorised by the Director of Finance and Business Services)

- 7.1 There will be costs associated with the publication of statutory notices in a local newspaper. These costs, which are estimated to be in the region of £1,000, will be met from existing budget provision within the Community Wardens' budget.
- 7.2 If dog control orders are made, in accordance with regulations 3(4)(a) of the Dog Control Orders (Procedures) Regulations, where practicable signs must be placed summarising the order on land to which a new order applies. There would be cost implications (of approximately £500) relating to the acquisition of such signage to be placed on site.
- 7.3 As set out within the legal implications below, the Council has the discretion to set a level of fixed penalty notice between £50 and £80. The default position, if the Council doesn't specify an amount is £75. The recommendation to the Cabinet Member is that the fixed penalty notice level

is set at £75; this is in line with the level set by the Council for fixed penalty notices which fall within the same bracket.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 Part 6 of the Clean Neighbourhoods and Environment Act 2005 ('the 2005 Act') provides local authorities with the discretionary power to make orders known as 'dog control orders' in relation to the following: (a) fouling of land by dogs and the removal of dog faeces; (b) the keeping of dogs on leads; (c) the exclusion of dogs from land; and (d) the number of dogs which a person may take onto any land.
- 8.2 Section 57 of the 2005 Act prescribes the land to which dog control order may apply, being any land which is open to the air (including covered land which is open to the air on at least one side) and to which the public are entitled or permitted to have access (with or without payment). Secondary legislation (the Control of Dogs (Non-application to Designated Land) Order 2009) that the powers to make dog control orders do not apply (i) to land that is placed at the disposal of the Forestry Commissioners under section 39(1) of the Forestry Act 1967; and (ii) in so far as they relate to the exclusion of dogs from land, land which is or forms part of a road.
- 8.3 The form of words which must be used in relation to dog control orders is prescribed within the Dog Control Orders (Prescribed Offences and Penalties, etc.) Regulations 2006 ('the 2006 Regulations'), including orders relating to the offences of: (i) the fouling of land by dogs; (ii) not keeping a dog on a lead; (iii) not putting and keeping a dog on a lead under direction; (iv) permitting a dog to enter land from which it is excluded; and (v) taking more than a specified number of dogs onto land. The 2006 Regulations also prescribe that the penalty in relation to these offences is, on summary conviction, a fine not exceeding level 3 on the standard scale (i.e. £1,000).
- 8.4 The procedure for making a dog control order is set out within the Dog Control Orders (Procedure) Regulations 2006 ('the Procedure Regulations') and includes the publication of notice of the proposals in a local newspaper with a minimum twenty-eight day period within which representations in relation to the proposals may be made. The Council is also required to consult the relevant 'secondary authority,' in this case Wilmslow Town Council.
- 8.5 If, following consideration of any consultation responses received, a local authority determines to make a dog control order, it is required by virtue of the Procedure Regulations, not less than seven days before the order comes into force to: (a) where practicable, place signs summarising the order in conspicuous positions on or near the land in respect of which it applies; (b) publish a notice relating to the making of the order in a local newspaper and on the Council's website; and (c) send information about the making of the order to the relevant secondary authority (i.e. the Town Council). The 2006 Regulations additionally provide that a dog control order

may not come into force before the period of fourteen days from the date on which the order was made.

8.6 Section 59 of the 2005 Act makes provision for the issue, by an authorised officer, of a fixed penalty notice as an alternative to prosecution for an offence within a dog control order. The statutory default level of fixed penalty notice is £75, however the local authority may determine the level, subject to the limitations within the Environmental Offences (Fixed Penalty Notices) (Miscellaneous Provisions) Regulations 2007 ('the 2007 Regulations'). The 2007 Regulations state that the amount of a fixed penalty notice must not be less than £50 and not more than £80 and any lesser amount for payment within a prescribed period must not be less than £50. It is suggested that the level of fine set should be proportionate and reasonable given the nature of the offence in question.

8.7 At the present time the land in question is covered by a designation made under the Dogs (Fouling of Land) Act 1996 ('the 1996 Act'). Whilst the 1996 Act was repealed by the 2005 Act, offences under the 1996 Act were preserved and the Borough of Macclesfield Dogs Fouling of Land Order 1998 continues to have effect. However, if any type of dog control order is made that applies to land already designated under the 1996 Act, the 1996 Act ceases to have effect in respect of the land subject to the dog control order.

8.8 The former Macclesfield Borough Council made a byelaw in 1982 which prohibited a person in charge of dog from allowing the dog to foul a footway or grass verge. Under subsection 64(4) of the 2005 Act, if an authority makes a dog control order in respect of an offence on a specified area of land, any byelaw dealing the same offence on that same area of land lapses.

8.9 Paragraph 13.2.3 of the Officer Management Arrangements within the Council's Constitution provides that CMT Members may authorise officers to enforce the requirements of legislation including by way of fixed penalty notice.

9.0 Risk Management

9.1 Consideration must be given to any consultation responses received in order to avoid risks associated with legal challenge to any orders made.

10.0 Background and Options

10.1 The Carrs, situated off Chancel Lane in Wilmslow, is an area of some 71 acres of land which is owned by the Council and operated as a country park. The River Bollin flows through the site, which also benefits from three public rights of way (footpath numbers: Wilmslow 5, Wilmslow 23 and Wilmslow 29).

- 10.2 In autumn 2010 the Council received a number of complaints about dog owners being irresponsible in the Carrs. This included at least one incident being reported to the Police, and others reported to the Councils Enforcement Officers. This culminated with several agencies holding a Dog Awareness Day on the Carrs in late autumn 2010. Subsequently, further information was received suggesting that non dog owning visitors to the Carrs remained concerned and in some cases frightened about: the numbers of dogs running loose on the Carrs; a lack of owners clearing up after their dogs had defecated; the presence of commercial dog walking companies; and a general lack of responsible dog ownership.
- 10.3 The Carrs is one of a number of sites on a list for passing attention by the Enforcement Officers. It has over the months, received more attention than other sites. In response to observations, the Carrs was targeted for a short period in July 2011, which resulted in seven Fixed Penalty Notices being issued for failing to clean up after a dog fouling incident.
- 10.4 Part 6 of the Clean Neighbourhoods and Environment Act 2005 makes provision for local authorities to make 'dog control orders' in respect of land which is open to the air and to which the public have access with or without payment (with limited exceptions as set out within the legal implications above). The 2005 Act and the relevant secondary legislation make provision for five possible types of 'dog control order,' these include:

- (a) Fouling of Land by Dogs Orders;
- (b) Dogs (Specified Maximum) Orders;
- (c) Dogs on Leads Orders;
- (d) Dogs on Leads by Direction Orders; and
- (e) Dogs Exclusion Orders

The penalty for committing an offence contained in a dog control order is level 3 on the standard scale (currently £1,000). Alternatively a fixed penalty notice may be offered by an authorised officer as an alternative to prosecution.

- 10.5 The form which a dog control order must take is prescribed within secondary legislation. There are defences in all dog control orders of: (a) having a reasonable excuse for failing to comply with an order; or (b) acting with the consent of the owner or occupier of the land, or of any other person or authority which has control of the land. Fouling of Land by Dogs Orders and Dogs Exclusion Orders include exemptions for people who are registered as blind and in relation to people who make the use of trained assistance dogs.
- 10.6 The Defra Guidance on Dog Control Orders confirms that authorities may make dog control orders provided that they are satisfied that an order is justified and has followed the necessary procedures. Paragraph 29 of the Guidance states, "*It is also 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.*" Paragraph 30 continues, "*The authority needs 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. A failure to give due consideration to these factors could make any subsequent Dog Control Order vulnerable to challenge in the Courts.”

- 10.7 Taking into consideration the nature of the site and the problems in relation to dogs which have been reported to the Council, the following dog control orders are proposed:

10.6.1 Fouling of Land by Dogs Order

As set out in the legal implications above, at the present time the Carrs is covered by a designation made under the Dogs (Fouling of Land) Act 1996 ('the 1996 Act') which provides the Council with the ability to issue Fixed Penalty Notices in relation to dog fouling offences. The legislative provisions prescribe that if any type of dog control order is made that applies to land already designated under the 1996 Act, the 1996 Act ceases to have effect in respect of the land subject to the dog control order. Therefore, if any form of dog control order were to be made in relation to the land the Council's existing powers would cease to have effect. For this reason it is proposed that a Fouling of Land by Dogs Order be made in relation to the land shown edged red on the plan attached as Appendix A (i.e. the whole of the Carrs site). It is suggested that the experience of the Community Wardens has demonstrated that dog fouling is an issue on this site and that an order of this nature is therefore both necessary and proportionate.

10.6.2 Dogs (Specified Maximum) Order

It is suggested that an order be made which specifies that the maximum number of dogs which a person may bring onto the land is four. This order has been proposed in the light of the concerns raised to the Council about the use of the site to walk multiple dogs by commercial dog walkers.

Paragraph 45 of the Defra Guidance states:

When setting the maximum number of dogs, the most important factor for authorities to consider is the maximum number of dogs which a person can control; expert advice is that this should not exceed six. Authorities should also take into account the views of dog owning and non-dog owning residents within the area to which the order will apply to establish what they consider to be an appropriate maximum number taking into account all the circumstances in the area. A key factor here will be whether children frequently use the area.

The content of the guidance, and its reference to six dogs, is noted. However, it is suggested that a maximum of four dogs is appropriate for this site as children do frequently use the area.

10.6.3 Dogs on Leads Order

It is proposed that a dogs on leads order (which would make it an offence, without reasonable excuse, to fail to keep a dog on a lead) be made in relation to the area of land shown hatched in black on the plan at Appendix B. This area is a piece of land (of approximately 26,146 square metres) located adjacent to Chancel Lane and north of the River Bollin and includes both playing fields and a children's play area. The natural boundary of the area which is formed by the River Bollin will assist in clearly distinguishing the area to which the order applies. Due to the specific uses which this area of land is put, it is suggested that it is proportionate and necessary to impose an order of this nature. It is not proposed that the order would specify a particular lead length, but rather that dogs must be kept on leads at all times in this area.

10.6.4 Dogs on Leads by Direction Order

Due to the problems which have been reported in relation to the control of dogs on the site, it is proposed that a 'dogs on lead by direction' order be made in relation to the area shown hatched in black on the plan at Appendix C (i.e. to the whole of the site with the exception of the area of land shown hatched in black on the plan at Appendix B, being the area of land to be covered by a dogs on leads order). Such an order would make it an offence for a person, without reasonable excuse, to fail to put a dog on a lead when given a direction to do so by an authorised officer of the Council. As per the previous order, it is not proposed that this order would specify a particular lead length

- 10.7 The procedure for making dog control orders is prescribed by secondary legislation (the details of which are set out in the legal implications above) and includes publication of a notice of the proposals in a local newspaper and consultation with the Town Council. If representations are received within the consultation period, and not withdrawn, these will be reported to a future meeting of the Cabinet Member for consideration.

- 10.8 As set out above, the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007 provide that the amount of a fixed penalty notice relating to a dog control order may be not less than £50 and not more than £80. This bracket also applies to the offences of (i) leaving litter (under section 88(6A)(a) of the Environmental Protection Act 1990); and (ii) graffiti and fly-posting (under section 43(A)(1)(a) of the Anti-Social Behaviour Act 2003). The Council has set the level of fixed penalty notice at £75 in relation to littering, graffiti and fly-posting. It is recommended to the Cabinet Member that the level of fixed penalty notice in relation to dog control orders also be set at £75. Section 60(3) allows the Council to make provision for treating a fixed penalty notice as having been paid if a lesser amount is paid before the end of a specific 'discount period.' However, it is suggested that, in line with the approach taken to fixed penalties for littering, graffiti and fly-posting, that a lesser amount will not be applicable.

10.9 The alternatives to the decision requested within paragraph 2.0 above would be:

10.9.1 not to approve any of the proposed dog control orders for statutory consultation;

10.9.2 to approve only one or some of the proposed dog control orders for statutory consultation; or

10.9.3 to approve the dog control orders for statutory consultation but on the basis of their application to amended geographical areas.

Whilst each of the above options is open to the Cabinet Member, the proposals put forward have been based on the issues which are specifically affecting the site.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

The Borough of Macclesfield Dogs Fouling of Land Order 1998
Macclesfield Borough Council Byelaw – Dogs Fouling Footways and Grass Verges

The Defra Guidance on Dog Control Orders may be accessed on the Defra website: www.defra.gov.uk

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