

CHESHIRE EAST COUNCIL

Cabinet Member for Environment

Date of Meeting:	23 July 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 background in relation to the recent consultation exercise on proposed 'dog control orders' in relation to specified areas of land at The Carrs in Wilmslow and requests that the Cabinet Member considers the consultation responses received.

2.0 Decision Requested

- 2.1 The Cabinet Member for Environmental is requested:

- 2.1.1 to consider the consultation responses received and to determine whether to make, with or without amendment, the following orders:

(a) the Fouling of Land by Dogs (The Carrs, Wilmslow) Order 2012 (as set out within Appendix A);

(b) the Dogs (Specified Maximum) (The Carrs, Wilmslow) Order 2012 (as set out within Appendix B);

(c) the Dogs on Leads (The Carrs, Wilmslow) Order 2012 (as set out within Appendix C); and

(d) the Dogs on Leads by Direction (The Carrs, Wilmslow) Order 2012 (as set out within Appendix D).

- 2.1.2 if approval is given for the making of order(s) within 2.1.1 above, to authorise the Borough Solicitor, or officer acting on her behalf, to make and bring into force the order(s) and to give notice thereof in accordance with statutory requirements.

- 2.1.3 subject to 2.1.1 above, 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 On 30th April 2012 the Cabinet Member for Environment provided approval for a statutory consultation exercise in relation to proposed 'dog control orders' for The Carrs, Wilmslow. The consultation period concluded on 21st June 2012 and a number of responses have been received. The Cabinet Member is therefore requested to consider the consultation responses and to determine whether to provide approval for the making of the orders.

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 If approval is given for the making of order(s) there will be costs associated with the publication of a statutory notice in a local newspaper. These costs, which are estimated to be in the region of £800, 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 was 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 The decision-maker is required to give consideration to the consultation responses received in order to avoid risks associated with legal challenge to any orders made.

10.0 Background and Options

- 10.1 As the Cabinet Member will be aware, 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.

10.2 On 30th April 2012 the Cabinet Member considered a report in relation to proposed dog control orders for The Carrs, Wilmslow and resolved to provide approval for consultation on the following orders:

10.2.1 the Fouling of Land by Dogs (The Carrs, Wilmslow) Order 2012 (as set out within Appendix A);

10.2.2 the Dogs (Specified Maximum) (The Carrs, Wilmslow) Order 2012 (as set out within Appendix B);

10.2.3 the Dogs on Leads (The Carrs, Wilmslow) Order 2012 (as set out within Appendix C); and

10.2.4 the Dogs on Leads by Direction (The Carrs, Wilmslow) Order 2012 (as set out within Appendix D).

10.3 During the consultation period the Council has received thirty-four responses to the proposals. The content of the consultation responses is reproduced within the table at Appendix E.

10.4 In considering the consultation responses and determining whether to make the order(s) the Cabinet Member is reminded of the provisions of the Defra Guidance on Dog Control Orders which 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."*

10.5 As the Cabinet Member will note, the table at Appendix E includes officer comments in response to some of the points raised within the consultation responses. However, a summary of the position is set out below in relation to each of the proposed orders:

10.6.1 Fouling of Land by Dogs Order

Whilst the majority of the thirty-four responses received generally indicate that they are opposed to the making of the Dog Control Orders as published, the detail of the responses appears to indicate that the orders of most concern to those who oppose the proposals are the Dogs on Leads and Dogs on Leads by Direction Orders rather than the proposed Fouling of Land by Dogs Order.

Eight of the respondents expressed their support for the proposed Orders generally, whilst three of those who object to the remainder of the Orders were in agreement with the proposed Fouling of Land by Dogs Order. In addition, a number of the respondents who object to the Orders do recognise that responsible dog owners should pick up after their dogs.

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 if any of the other three proposed Orders are to be approved, the officer recommendation would be that approval should also be given to the Fouling of Land by Dogs (The Carrs, Wilmslow) Order 2012 (as set out within Appendix A) to allow the Community Wardens to continue to enforce in relation to dog fouling.

10.6.2 Dogs (Specified Maximum) Order

The proposed Dogs (Specified Maximum)(The Carrs, Wilmslow) Order 2012 proposes that it would be an offence for a person to take more than four dogs onto land which is covered by the Order unless he has reasonable excuse for doing so or has permission from the owner of the land to do so.

As set out above, the majority of the consultation responses received are generally in opposition to the Orders. Five of the responses make specific reference to the proposed figure of four as a maximum number of dogs and express concern about those dog walkers who would be prohibited from using the site as a result of this restriction.

One respondent who supports the introduction of the Orders questions whether the maximum number of four dogs per person is too high. Another respondent who expresses general concern about the introduction of the Orders does agree that there should be a maximum of four dogs per person at any one time.

As the Cabinet Member will recall, 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.

This order, and the maximum figure of four dogs per person, was proposed in the light of the concerns raised to the Council both from individuals and from

the Friends of the Carrs group about the use of the site to walk multiple dogs by commercial dog walkers and the extent of control which can be exercised by an individual over multiple dogs. The figure of four was suggested as an appropriate and reasonable maximum for this site given the nature of the area and the uses to which it is put (including the use by children and families).

The Cabinet Member is requested to consider the consultation responses received and, taking these views into account, determine whether to make the Order, either with or without amendment.

10.6.3 Dogs on Leads Order

Of the twenty-six respondents who were in opposition to the Orders, the majority expressed concern about the proposed Dogs on Leads Order and the proposed Dogs on Leads by Direction Order. Unfortunately there appears to have been confusion in some cases about the proposed extent of these Orders with some respondents suggesting that the requirement to have a dog on a lead at all times was to apply to the site as a whole. Some respondents suggest either (i) designated areas for dog walkers; or (ii) times/periods during which the Order would take effect.

However, of those who were generally in opposition to the Orders, whilst questioning the extent of the area covered by the current proposals, eight respondents recognise the benefits of imposing restrictions in areas surrounding children's play areas.

In addition to the above, a number of the eight respondents who support the Orders specifically refer to the proposed Dogs on Leads Order, one respondent states "I have two young children and have often felt it a shame that there isn't a space where children can run about freely in the park (outside the fenced in play area) without the risk of a dog bounding up to them. It will also enable people to have picnics or play games in this area without being disturbed by dogs."

As can be seen from the plan attached to the Order at Appendix C, the area which was covered by the proposals is located adjacent to Chancel Lane and north of the River Bollin and includes children's play areas, playing fields and picnic areas. It is also suggested that the natural boundary of the area which is formed by the River Bollin would assist in clearly distinguishing the area to which the order applies.

In terms of the hours during which the proposed Order would have effect, the relevant secondary legislation does make provision for the Order to have effect during prescribed times/periods; however, officers would suggest that the introduction of such time periods would not be practicable from an enforcement perspective and would not achieve the benefits which are sought by the proposed introduction of this Order. In addition, given that the site is open for and used by many different sections of the community throughout the year and a seasonal limit on the powers within the proposed Orders is not recommended.

Due to the specific uses which this area of land covered by this proposed Order is put (i.e. children's play areas, playing fields and picnic areas), it is suggested that it is a proportionate and necessary step to impose an order of this nature.

The Cabinet Member is requested to consider the consultation responses and determine whether to make the proposed Dogs on Leads Order, either with or without amendment.

10.6.4 Dogs on Leads by Direction Order

As stated above, of the twenty-six respondents who were in opposition to the Orders, the majority expressed concern about the proposed Dogs on Leads Order and the proposed Dogs on Leads by Direction Order. A number of the responses appeared to be on the basis that the site as a whole was to be covered by a Dogs on Leads Direction.

As the Cabinet Member will note, the proposals incorporate a Dogs on Leads Order in relation to an area of the site adjacent to Chancel Lane and north of the River Bollin, and proposed a Dogs on Leads by Direction Order in relation to the remainder of the site. The proposed Dogs on Leads by Direction Order does not impose a requirement to keep dogs on leads at all times, but rather provides that an authorised officer be able to give a direction under the Order to put and keep a dog on a lead if such restraint is "reasonably necessary to prevent a nuisance or behaviour by the dog likely to cause annoyance or disturbance to any other person on land to which the Order applies or the worrying or disturbance of any animal or bird." It is therefore suggested that, subject to the area covered by the Dogs on Leads Order, the proposals should not impact upon the majority of responsible dog owners who use the site.

As above, the relevant secondary legislation does make provision for the Order to have effect during prescribed times/periods; however, officers would suggest that the introduction of such time periods would not be practicable from an enforcement perspective and would not achieve the benefits which are sought by the proposed introduction of this Order.

The proposals in relation to a Dogs on Leads by Direction Order were put forward in response to complaints about the behaviour of some dogs using the site and the control exercised by their owners. It is suggested that the proposed Dogs on Leads and Dogs on Leads by Direction Orders, taken together, achieve a balance between the interests of those in charge of dogs and 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'

The Cabinet Member is asked to consider the consultation responses received and to determine whether to make the proposed Dogs on Leads by Direction Order, either with or without amendment.

- 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 alternative options which are open to the Cabinet Member are, having considered the content of the consultation responses:
- 10.9.1 to provide approval for the making of Dog Control Order(s) on the basis set out within Appendices A – D;
- 10.9.2 to determine not to approve the making of Dog Control Orders(s) on the basis set out within Appendices A – D; or
- 10.9.3 subject to any additional consultation which is required, to provide approval for the making of Dog Control Order(s) as amended either by reference to the wording of the order(s) or the extent of the area to which they are to relate.

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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