

MAYOR AND CABINET		
Report Title	Dog Control Orders	
Key Decision	Yes	Item No. 5
Ward	All	
Contributors	Executive Director for Customer Services	
Class	Part 1	Date: 28 January 2009

1. Summary

- 1.1. The Clean Neighbourhoods and Environment Act 2005 (CNEA 2005) introduced new powers and fixed penalties for local authorities to counter and reduce environmental crime across the public realm. In March 2007 Mayor & Cabinet agreed that officers commence the statutory consultation for making a borough-wide dog control order so as to ensure effective dog related enforcement.
- 1.2. Local authorities are required to carry out statutory public consultation when proposing the making of a Dog Control Order. In order to listen to residents views on this important subject the consultation period was extended beyond the statutory 28 days to over 8 weeks. This report details the proposed Dog Control Order and the outcome of the consultation.

2. Policy Context

- 2.1. Lewisham shares a vision with its partners to make Lewisham the best place to live, work and learn and the adoption of a Dog Control Order feeds into Lewisham's Sustainable Community Strategy under:
 - Safer – where people feel safe and live free from crime, antisocial behaviour and abuse.
 - Clean, green and liveable – where people live in high quality housing and can care for and enjoy their environment.
 - Healthy, active and enjoyable – where people can actively participate in maintaining and improving their health and well-being.
- 2.2. The adoption of a Dog Control Order further supports relevant Council Corporate priorities, which include:
 - Clean, green and liveable – improving environmental management, the cleanliness and care for roads and pavements and promoting a sustainable environment;
 - Safety, security and a visible presence – partnership working with the police and others to reduce crime levels further, and using Council powers, to combat anti social behaviour.

- Inspiring efficiency effectiveness and equity – ensuring efficiency, effectiveness and equity in the delivery of excellent services to meet the needs of the community.

3. Purpose

- 3.1. The purpose of this report is to advise on the outcome of the consultation required in order to adopt a Dog Control Order and for the Mayor to approve the adoption of the borough wide Dog Control Order as detailed below.

4. Recommendations

The Mayor is recommended:

- 4.1. To approve the making of the borough-wide Dog Control Order with five offences of:
- Failing to remove dog faeces
 - Not keeping a dog on a lead in designated areas (these will be sign-posted in public areas)
 - Not putting, and keeping, a dog on a lead when directed to do so by an authorised officer
 - Permitting a dog to enter land from which dogs are excluded
 - Taking more than a specified number of dogs onto land.
- 4.2 To delegate to such persons as the Executive Director for Customer Services shall nominate, as detailed in section 59 (11) of the Clean Neighbourhoods and Environment Act 2005 , to enable them to take enforcement action on behalf of Lewisham Council in respect of a Dog Control Order, including the issuing of Fixed Penalty Notices.

5. Narrative

- 5.1. The agreement to commence with the consultation on Dog Control Orders was approved at Mayor & Cabinet on 14th March 2007. Consultation commenced on 13th October and finished on 9th December 2008, whereby the proposed borough-wide Dog Control Order containing the following five potential offences were consulted upon:
- Failing to remove dog faeces
 - Not keeping a dog on a lead in designated areas (these will be sign-posted in public areas)
 - Not putting, and keeping, a dog on a lead when directed to do so by an authorised officer
 - Permitting a dog to enter land from which dogs are excluded
 - Taking more than a specified number of dogs onto land.
- 5.2. Officers also launched the Borough Action for Responsible Kanine's (Bark) initiative to coincide with the consultation to raise awareness of responsible dog ownership in the borough. Further, it was ensured that all interested organisations were aware of the consultation, which included the local housing providers, park users and other friends of groups as well as the Kennel Club, Police and Battersea Dogs and Cats Home.

- 5.3. The responses to the proposals have been carefully considered with the overall aim in introducing the Dog Control Order to promote responsible dog ownership and to suggest a more consistent approach to dog control through the adoption of the legislation contained in the CNEA 2005.
- 5.4. Once the Dog Control Order has been formally implemented the use of enforcement and fixed penalty notices can commence. The target date for implementation is the 6th April 2009.

6. The Dog Control Order Consultation and Analysis

- 6.1. As indicated the Council consulted widely on the Dog Control Order and extended the deadline to allow as much feedback as possible. Responses totalled 751 to the questionnaire with 42 additional responses in the form of letters and emails plus 288 comments raised on the questionnaire. A detailed breakdown of the responses can be found in Appendix one.
- 6.2. The response to the Dog Control Order consultation and proposed action are detailed below.
- 6.3. Failing to remove dog faeces – of the 750 respondents who commented on this order 99.73% agreed to the use of this order. It is therefore proposed that the requirement will apply borough wide.
- 6.4. Not keeping a dog on a lead in designated areas – of the 749 respondents that commented on keeping dogs on a lead on public footpaths and highways, 97.86% agreed with the proposal. Further, 61.55% of the respondents agreed that the proposal for keeping dogs on a lead in Cemeteries and Crematoriums was acceptable. It is therefore proposed that this requirement be applied to the sites listed in the attached schedule (Appendix 2).
- 6.5. Not putting, and keeping, a dog on a lead when directed to do so by an authorised officer – feedback received from respondents shows that there is a concern with regards to dogs., including comments such as:
- ‘This is a very welcome and overdue attempt to make dog owners more responsible. One of the main safety issues is the number of un-muzzled dogs in busy people, public places’
 - ‘Responsible dog owners will already adhere to most sensible rules of where dogs should be on leads/where they can exercise/picking up dog muck. Prosecute more people who ignore their responsibilities, especially those who let their dogs wander the streets off lead and allow them to foul everywhere’.
 - ‘I am now unable to take my dog to the local park because of dogs off leads. I am finding that groups of young men are using their dogs like weapons. The poor dogs are often off leads when walking along pavements and looking anxious’.
- 6.6. It is therefore proposed that putting, and keeping, a dog on a lead when directed to do so by an authorised officer be applied borough wide.

- 6.7. Permitting a dog to enter land from which dogs are excluded – 749 responses were received to the question regarding the prevention of dogs from entering children’s play areas and other games and sports areas and other areas identified in the consultation including certain parks and areas within parks. Of these 354 respondents agreed that dogs should be kept on leads in parks except for exercise areas whilst 347 respondents agreed that there should be no general restriction in parks except for areas that are dog free. Given that the results are very close, there’s no real mandate to make any change to the proposed requirement. However, for certain parks where people have identified a concern the Parks Dept would investigate creating dog exercise areas.
- 6.8. The feedback also confirmed that 72% of respondents felt that dogs should be excluded from children’s play areas and 71% felt that they should be excluded from fenced sports areas within parks.
- 6.9. 58% of respondents felt that dogs should be allowed on leads into Nature Reserves. It would be impractical for this to be implemented as the nature reserves are locked and / or not owned by Lewisham Council, although where the opening of nature reserves is facilitated a dogs on lead policy can be implemented. However, a dog exclusion policy must be implemented at Hare & Billet Pond as dogs may disturb potentially nesting water fowl and at Devonshire Road Nature Reserve where the Management Committee have a no dogs policy.
- 6.10. It is therefore proposed that the permitting a dog to enter land from which dogs are excluded requirement be applied to the sites listed in the attached schedule (Appendix 2).
- 6.11. Taking more than a specified number of dogs onto land – 745 responses were received with regard to the maximum number of dogs one person can take onto land at one time. 66.71% of respondents felt that the proposed maximum number of 6 dogs was too many. It is therefore proposed that this requirement states that no more than 4 dogs per person to be taken onto land.

7. Enforcement

- 7.1. Fixed Penalty notices of £75 can be issued to persons who commit any of the five offences under the Dog Control Order. This will discharge any liability to conviction and if the recipient of the FPN chooses instead not to pay the FPN within 14 days, then the issuing Authority may issue criminal proceedings against them.
- 7.2. Fixed penalties for offences under dog control orders may be issued by authorised officers under section 59(1) and (2). Section 59(11) defines who are ‘authorised officers’: Employees of primary and secondary authorities who are authorised for this purpose Any person authorised (including employees of that person) in writing by a primary or secondary authority in pursuance of arrangements made by that person and the relevant authority.

- 7.3. Section 62 extends the same powers to Police Community Support Officers and other persons accredited by Chief Police Officers under the Police Reform Act 2002.
- 7.4. During this consultation some respondents have expressed concern as to how the enforcement of the Dog Control Order will be managed. By adopting the Dog Control Order, officers will be consistent and proportionate in the actions that are taken. Further, officers will have discretion to enable them to respond to the impact of anti-social activity, the behaviour of the dog, the dog owner, the response received during the engagement and the local environment. A range of officers have been identified throughout council services in Customer Services and once they can act as authorised officers as defined in s 59 (11) (b) & (c) of the Cleaner Neighbourhoods & Environment Act.
- 7.5. It might be helpful to give an illustrative example: A dog is off the lead in an open space, and walking alongside the owner, the dog is responsive to the owners voice and appears to be under control. An officer would take account of the situation and take no action, as the dog isn't causing a problem and the owner is in control of the dog.
- 7.6. If the officer was on patrol in a park and contacted by a person who was concerned by a dog that was off the lead in a busy park and running around and barking, the officer would speak to the owner and explain that under the circumstances the dog should be put and kept on the lead whilst in the park. If the owner refused to put the dog on the lead, the officer would take account of the circumstances and issue a fixed penalty notice to the owner.

8. Delegated Authority to Officers and Others

- 8.1. The parks contractor and street wardens have been identified as officers that can deal with low level anti-social behaviour and will work alongside Environmental Enforcement Officers who are currently authorised to issue Fixed Penalty Notices.
- 8.2. Under section 59 (11) (b) & (c) of the CNEA 2005 the Director may give authority to:
(b) Any person who, in pursuance of arrangements made with the authority, has the function of giving such notices and is authorised in writing by the authority to perform that function; and (c) Any employee of such a person who is authorised in writing by the authority for the purpose of giving such notices.

9. Financial implications

- 9.1. An initial estimate of the minimum additional costs is £10,000, covering items as statutory notices in the local press and signage. Given the financial position of the Authority requiring savings to be identified, and with limited growth, Enforcement and the Environment Division should look to contain these costs within existing budgetary provisions.
- 9.2. Fixed Penalty Notices will be issued at £75 per offence. Any income derived from the issue of fixed penalty notices will be retained by Lewisham Council and applied to the

running costs of the service, including statutory notices, ongoing education, awareness and enforcement activities.

- 9.3. The cost of training for officers in the issuing of fixed penalty notices will be met through existing budgets.

10. Legal implications

- 10.1. The legal consultation procedure before making a Dog Control Order has been complied with. At the end of the consultation period the Council must consider the representations that have been made. If after receiving representations the Council decides to significantly amend its proposal, it must start the consultation process again.
- 10.2. Where a decision is made to proceed with a Dog Control Order, the Order must come into effect at least 14 days from the date it was made. At least 7 days before it comes into effect a notice containing prescribed information must be published in a local newspaper and on the Council's website. Further, where it's practicable signs should be posted or placed so as to summarise the order and requirements on or near the land to which it applies.
- 10.3. It should be noted existing dog byelaws operating in the borough remain in force indefinitely and can continue to be enforced. However, a dog byelaw will cease to have effect where the council makes a dog control order for the same offence as the byelaw covering the same land. In addition the council needs to be mindful of ensuring that when making dog control orders they are not in conflict with any existing byelaws. Where there is a conflict steps should be taken to revoke the relevant byelaw(s).
- 10.4. The Dogs (Fouling of Land) Act 1996 shall cease to have effect.
- 10.5. Under section 59 (11) (b) & (c) of the CNEA 2005 authorised officers are able to issue Fixed Penalty Notice's (FPNs). This also gives the requirement for the Council's contractors to issue FPNs, provided that the Council gives written authority to their employees to perform this task. Also the Council must have in place an arrangement with its contractors to perform this function. This provision would enable Glendale to issue FPNs on behalf of the Council where these conditions are met.
- 10.6. Anyone who commits an offence under any of the provisions of the Dog Control Order may be liable on conviction in the Magistrates Court to a fine of up to £1,000. The Council will issue £75 Fixed Penalty Notices for Dog Control offences and anyone who fails to pay a Fixed Penalty Notice may be prosecuted.
- 10.7. Regulations provide that the receipts from the issue of Fixed Penalty Notices are to be used by the Authority for certain specified functions. However, authorities that are "excellent" or "good" under Comprehensive Performance Assessment (CPA) can use the receipts for any functions.

11. Crime and disorder implications

11.1. There have been an increasing amount of complaints within various departments of the Council with respects to irresponsible behaviour with dogs including, dog bating, dog fighting and vandalism e.g. to trees. The approval of the Dog Control Order will assist with the Council's regulatory practices and better assist Council officers to carry out their duties more effectively in relation to irresponsible dog ownership and associated anti-social activity.

12. Equalities implications

12.1. Consideration as to the impact of irresponsible dog ownership on children, blind and partially sighted people and those with disabilities has been given. The Dog Control Order is in line with Lewisham Council's duty under the Children Act 2004 to discharge our functions with regard to the need to safeguard and uphold the welfare of children.

12.2. Exemption for the disabled is inherent within the CNEA 2005. Failing to remove dog faeces offence does not apply to a person who is registered as a blind person or to a person who has a disability, which affects their mobility, manual dexterity or physical co-ordination.

12.3. The above group and deaf persons are also exempt from the offence of permitting a dog to enter land from which dogs are excluded. Authorized officers will use discretion when dealing with enforcement in all groups.

12.4. Below is the Equalities Impact Scoping table.

Table 1 – Equalities Impact Assessment Scoping table

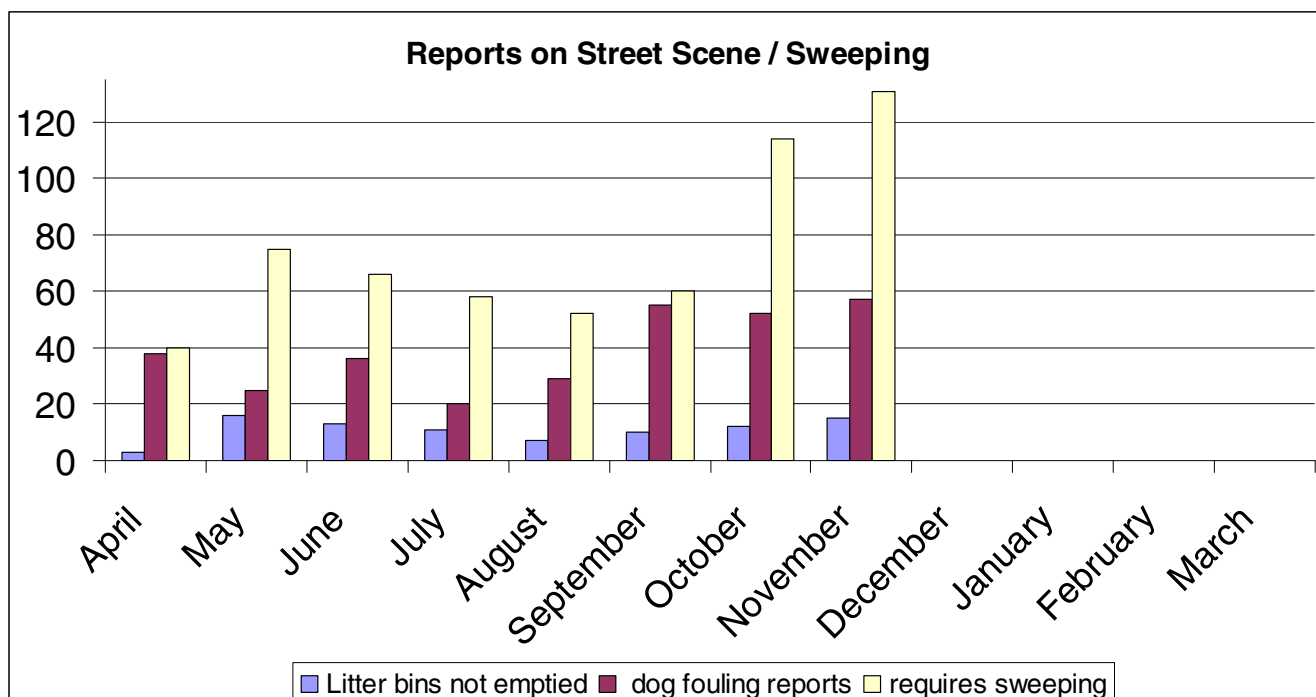
EQUALITIES IMPACT ASSESSMENT SCOPING			
Equalities category	Equalities legislation – consider Human Rights Act as well	Assessment of Potential Impact – High, Medium, Low, Nil	Reason for this assessment
Gender	Sex Discrimination Act Equal Pay Act Equalities Act 2006 Gender Recognition Act 2004	Nil	
Race	Race Relations Act Race Relations (Amendment) Act	Nil	
Disability	Disability Discrimination Act	Medium	Exemption for the disabled is inherent within the CNEA 2005. Failing to remove dog faeces Order does not apply to a person who is registered as a blind person or to a person who has a disability, which affects their mobility,

			manual dexterity or physical co-ordination. The above group and deaf persons are also exempt from the offence of permitting a dog to enter land from which dogs are excluded.
Age	Age Regulations 2006	Medium	The dog control orders are in line with Lewisham Council's duty under the Children Act 2004 to discharge our functions with regard to the need to safeguard and uphold the welfare of children.
Sexual orientation	Equalities Act 2006 Relevant employment legislation	Nil	
Religion and belief system	Equalities Act 2006 Relevant employment legislation	Nil	

13. Environmental implications

- 13.1. Dog fouling is an environmental concern that is a result of irresponsible dog owners. The number of reports that have been received regarding dog fouling can be seen in graph 1 below, which until recently has been increasing. The Council and its partners undertake monitoring of cleanliness standards and the observations of dog fouling through Encams monitoring shows that in 2007/08 nearly 9% of all surveys had incidences of dog fouling. Year to date for 2008/9 shows dog fouling incidences in 6.5% of surveys.
- 13.2. In response to the rise in dog fouling officers in the Council have undertaken a number of Responsible Animal Ownership Days to educate and advise the borough's residents and visitors of their responsibilities as dog owners. This has included a poster competition for local school children, putting the 'Bag It & Bin It' stencils on pavements, letter drops, posters in shop windows and patrols in local parks. Officers have also recently launched the Borough Action for Responsible Kanine's (Bark) initiative to promote responsible dog ownership.
- 13.3. The approval of the Dog Control Order will enable appropriate enforcement action to be taken against the minority of irresponsible dog owners, thus ensuring a cleaner environment and better quality of life for all.

Graph 1 – Reports of dog fouling



14. Conclusion

14.1. Through the consultation process officers have listened and taken on board the views of respondents. The combination of an effective education and advice strategy with proportionate and relevant Dog Control Order enforcement will provide a robust framework within which officers can promote, encourage and support the majority of responsible dog owners whilst challenging the anti-social behaviour of the minority in the borough who fail to control their dogs or clean up after them.

15. Background documents and originator

Title Document	Date	Location
Mayor & Cabinet Report Enacting provisions Re Cleaner Neighbourhoods and Environment Act 2005	March 2007	Wearside Depot, SE13
Clean Neighbourhoods and Environment Act 2005		
Statutory Instrument 2006 No. 1059 (Dog Control Orders Prescribed Offences)		

Title Document	Date	Location
and Penalties)		
Statutory Instrument 2006 No. 798 (Dog Control Orders Procedures)		
Police Reform Act 2002 - Statutory Instrument 3202		
DEFRA Guidance – Sections 55-67 CNEA 2005		

15.1 For further information please contact Sam Kirk at sam.kirk@lewisham.gov.uk or 020 8314 2076.

Appendix One – Consultation Results

	Hardcopies - 327	Online Survey - 424	Total	% agree	% disagree
Should dog owners be responsible for cleaning up their dog mess					
yes	326	422	748		
no	1	1	2		
			750	99.73%	

Should dogs be kept on leads in streets					
yes	323	410	733		
no	2	14	16		
			749	97.86%	

Should dogs be kept on leads in parks					
yes	110	244	354		
no general req apart dog free areas	207	140	347		
No general restriction	10	38	48		
			749	47.26%	46.33%

Should dogs be kept on leads in housing estates					
yes	249	249	498		
no general req apart dog free areas	73	62	135		
No general restriction	0	9	9		
			642	77.57%	

Please comment on the number of dogs that a person may take onto public land					
No more than 6	104	87	191		
6 is to many	203	294	497		
6 is to small	7	6	13		
no restriction	10	34	44		

	Hardcopies - 327	Online Survey - 424	Total	% agree	% disagree
			745	66.71%	
planting & shrubbery					
excl	202	162	364		
lead	94	254	348		
no reply	24				
			712	51.12%	48.88%
catering areas-outside					
excl	170	191	361		
lead	145	235	380		
no reply	12				
			741	51.28%	48.72%
children play areas					
excl	225	315	540		
lead	96	114	210		
no reply	6				
			750	72.00%	
Fenced sport areas					
excl	247	285	532		
lead	65	144	209		
no reply	15				
			741	71.79%	
Nature reserves					
excl	92	194	286		
lead	202	195	397		
no reply	30				
			683	58.13%	41.87%
cemeteries and crematoriums					
excl	93	180	273		
lead	207	230	437		
no reply	23				
			710	61.55%	

Appendix Two – Proposed Dog Control Order

Type of Requirement	Locations where orders would apply
Fouling of land by dogs	<p>All public footpaths and highways, including tree bases, grass verges and gutters.</p> <p>All parks, gardens and open spaces managed by the Director of Customer Services, excluding areas where dog exclusion orders are in operation.</p>
Areas where dogs are required on leads	<p>All public footpaths and highways, including tree bases, grass verges and gutters. The following nature reserves: Burnt Ash Pond LNR, Grove Park NR and Sydenham Cottages NR. Cemeteries and Crematorium's within LB Lewisham</p>
The requirement to put a dog on a lead by direction of an authorised officer	<p>All parks, gardens and open spaces managed by the Director of Customer Services, excluding areas where dog exclusion orders are in operation.</p>
The exclusion of dogs from specified areas	<p>All play areas, fenced sports areas within parks, gardens and open spaces managed by the Director of Customer Services. Play areas on Housing estates with LB Lewisham.</p> <p>Grove Park Library Gardens, Hare & Billet Pond, Telegraph Hill Park – Lower, Friendly Gardens – Upper, Brookmill Park, Horniman's Play Park, Friendsbury Gardens, Broadway Fields – east of river, Central field in Mayow Park and Northbrook Park, Cornmill Gardens apart from waterway link. Devonshire Road NR, Garthorne Road NR, Dacres Wood LNR. Chinbrook Allotments, Besson Street Multi Cultural Garden, Brookmill LNR, Queenswood NR (Sydenham Gardens) and Hither Green Triangle.</p>
The maximum number of dogs that an individual may take onto specified areas	<p>All parks, gardens and open spaces managed by the Director of Customer Services, excluding areas where dog exclusion orders are in operation.</p>