

Agenda Item

Executive Board

28 November 2007

AE/smep



Clean Neighbourhoods and Environment Act 2005

Summary

Following agreement to adopt and use the range of powers under the Clean Neighbourhoods and Environment Act 2005, and putting necessary officer structures in place, this report seeks formal agreement on detailed matters to put the powers into effect.

Recommendation

To authorise a programme of publicity of the Council's intent to issue fixed penalty notices for various offences as becomes necessary in accordance with the Council's enforcement policy from 1 April 2008.

That the Corporate Director with delegated authority for the Clean Neighbourhoods and Environment Act 2005 authorises such officers of the Council or contractors or other agencies as he legally may do.

That Parish and Town Councils be made aware (during the publicity phase) of the proposed approach, and the scope for their direct involvement in either enforcing certain parts of it or requiring that they publicise it through newsletters etc.

To authorise the process of consultation and publicity to make dog control orders (to replace the existing dog control regime and to impose dog ban restrictions on certain children's play areas not presently controlled).

To set the appropriate level of fixed penalty notices as follows:

Littering Offences £80 (the default amount if no level is set by the Council will be £75).

Failure to comply with street litter control or litter clearing notices £110 (the default amount if no level is set by the Council will be £100).

Unauthorised distribution of printed material £80 (the default amount if no level is set by the Council will be £75).

Offences under dog control orders £80 (the default amount if no level is set by the Council will be £75).

To adopt, as a precautionary measure, the powers on enforcement of sales of spray paint should this prove necessary.

Recommendation (contd...)

To adopt the new graffiti and flyposting powers.

To agree a maximum of six dogs as the number reasonably controllable by one person.

To agree a new offence of not putting or keeping a dog on a lead when instructed to do so by an authorised officer.

a) Reasons for Recommendation

These recommendations follow the Council's intent as agreed by Executive on 14th March 2007 (following TAFF recommendations).

b) Alternative Options

To agree all or some publicity and alternative levels of fines.

c) Risk Considerations

By adopting the new powers there may be an assumption of capacity to use these where and whenever issues arise. In reality we will need to forget our resources.

d) Policy and Budgetary Considerations

The Council has adopted the principles of Cleaner, Safer Neighbourhoods in its recent prioritisation from the visioning exercise. It is already under a statutory duty to provide a dog warden service for receiving stray dogs. In addition it has been the policy of this Council for many years that additional dog controls should be imposed and enforced to strike a balance between the sometimes conflicting needs of dog walkers and those residents and visitors who wish to be protected from dogs and dog fouling. This represents a development and rationalization of existing controls consistent with this policy.

The costs of advertising and public consultation are likely to be of the order of £3000 and will be met from within existing budgets. Some additional signage will be required. A number of replacement "dog ban", "dogs on leads" and "no fouling" signs are required each year anyway. The costs of additional signage this year is estimated as £1000 which will also be met from within existing budgets.

e) Date for Review of Decision

2 years

1 Main Body of the Report

1.1 Introduction

The principal departments concerned with cleaner, safer, neighbourhood control are:

Environmental Health
Street Scene
Legal
Planning and Countryside

This legislation followed a review of the legislative framework for providing and maintaining a clean and safe local environment. This was carried out in 2002 by, for and on behalf of DEFRA to accompany the cross-Government report 'Living Places- Cleaner, Safer, Greener'.

The Clean Neighbourhoods and Environment Bill became law in 2005 although not all of the provisions became effective straight away. This is an important piece of legislation and it adds significantly to the Council's toolkit for dealing with so-called low-level environmental crime. The detailed elements (relating to antisocial behaviour) were considered and recommended upon by the Council's Anti-social behaviour TAFF and agreed by Executive Board in March 2007. As we have now re-let the dog warden contract, have a direction on the community warden work, and Streetscene are now forming their REACT team, we now have some potential resources to carry out this work and to allow clear delegation of the powers.

The Scrutiny Committee recommended adopting all of these powers following its Task and Finish Forum. Details of the new powers are as set out at Appendix A.

The specific powers in the Act address many of the issues, which blight neighbourhoods. Some of these are very much more relevant to East Devon than others. Examples of the issues addressed include: litter, fly posting, fly-tipping, abandoned and nuisance vehicles. The new powers are designed to supplement existing legislation in order to enable councils to act swiftly to keep public spaces clean and safe. The Act also enables Council officers to seize and destroy vehicles caught fly-tipping. Finally, the Act also enables Council staff and (in many cases) others including PCSOs and the Council's own contractors to issue on the spot fines (fixed penalty notices) for a range of litter, waste, dog control and vehicle offences. In discussion with the police they are, in principle willing for their officers and PCSO's to also be afforded these powers.

2. Fixed Penalty Notices (FPNs)

These can be used instead of prosecution for a large number of the new offences introduced by the Act. The Council is now able to issue fixed penalty notices for a number of offences including litter, dog fouling, free literature distribution and nuisance vehicles.

If the person served with the FPN fails to pay it within 14 days, the Council must then commence prosecution proceedings for the original offence. Officers empowered to issue FPNs now have a legal power to demand the name and address of a person they believe has committed an offence, with a maximum fine of £1000 for failure to do so.

2.1 Retention of FPN Receipts

All fixed penalty notice receipts can be retained by the authority, although they are not intended to be revenue-raising but to provide an adequate deterrent and to cover the cost of enforcement.

FPN levels have been set for each type of offence. The actual fine can be determined by the Council (between minimum and maximum amounts specified by Government), except for nuisance vehicles, which are set at £100 and abandoned vehicles, which are set at £200. The Council has suggested it wishes to adopt the maximum level.

2.2 Authority to Issue FPNs

Fixed penalty notices may be issued by any employee of the Council who has been authorised in writing to do so. This power may also be delegated to appropriately trained and authorised contractors acting on behalf of the Council, but only in respect of certain categories of offence including dog control, distribution of free literature and littering offences. Parish Councils are also able to authorise people to issue fixed penalties, but only in relation to certain categories of offence including dog control and littering. For the avoidance of doubt guidance specifies that Parish Councils are not allowed to authorise Parish Councillors themselves for this purpose.

3. Enforcement arrangements

This report particularly identifies those provisions relevant to the work of the Council's Environmental Health and Street Scene services. Members are requested to note the range of powers available to Officers and their contractors and to authorise the Corporate Directors who have obligations for the Act to issue written authorisations to their officers and contractors, the Police or Parish Council staff who have appropriate training and experience.

In accordance with statutory guidance, Members are recommended to authorise officers to publicise the intention to issue fixed penalty notices in accordance with the Council's enforcement policy from 1 April 2008.

- 3.1 Finally Members are asked to agree an appropriate level of fixed penalty notice to be applied to each category of offence were the Council has a choice.

In the context of this report those are:

Littering Offences (£50-£80) (the default amount if no level is set by the Council will be £75)

Failure to comply with street litter control or litter clearing notices (£75-£110) (the default amount if no level is set by the Council will be £100)

Unauthorised distribution of printed material (£50-£80) (the default amount if no level is set by the Council will be £75)

Offences under dog control orders (£50-£80) (the default amount if no level is set by the Council will be £75)

The report to Executive Board in March 2007 agreed the principle that the maximum fine available should be levied, hence these are set out in the recommendations.

- 3.2 Whilst the new officer arrangements and liaison with the police allows some resource for consistent enforcement of these powers, it is important for Members to note that such enforcement is not the only role of such officers.

As such, whilst the powers are available these may need to be used judiciously on the most significant cases in a "blitz" approach. This will meet the agreed policy of the Council for a robust and targeted approach without requiring still further resources.

- 3.3 The final sections of this report deal with detailed proposals to commence the consultation and publicity process necessary to protect certain children's play areas with a Dog Control Order banning dogs from them and, at the same time, replacing the Council's existing regime of Dog Byelaws and controls under the Dogs (Fouling of Land) Act with a single, simplified regime of Dog Control Orders.

Although officers are not recommending any changes to the existing dog control regime, it is anticipated that Town and Parish Councils will, quite properly, have a view on certain controls and areas within the existing regime. Hence they may wish to see changed under the new regime, hence a consultation process is proposed. It is then also proposed that Officers should prepare a further report to Members if there are any adverse response to the Consultation exercise and, in particular, identifying any evidence that demonstrates a need for change.

3.4 Dog Control Orders

Under the Dogs (Fouling of Land) Act 1996 it is an offence to fail to remove canine faeces from so called designated land. In East Devon this means all land which is open to the air and to which the public are entitled or permitted to have access (with or without payment) with the exception of:

- land comprised in or running alongside a highway which comprises a carriageway where the driving of motor vehicles on the carriageway is subject to a speed limit of more than 40 miles per hour
- land used for agriculture or for woodlands
- land which is predominantly marshland, moor or heath and common land.

The penalty for failing to comply is a fine of up to level 3 on the standard scale (currently £1000 following conviction) or as an alternative the Council may issue a fixed penalty notice (currently £50).

Under the various local byelaws offences are punishable by a fine of up to level 2 on the standard scale (currently £500 following conviction).

Under the new Dog Control Order regime all offences are also punishable by a fine of up to level 3 on the standard scale (£1000 following conviction) but in respect of first offences, officers will be able to issue a fixed penalty notice and the Council may choose to set the amount anywhere in the range £50 to £80.

The new legislation has repealed the Council's power to make bye-laws for dog control measures as these matters can be incorporated into new control orders. The power to designate any new land under the Dogs (Fouling of Land) Act control regime has also been repealed. However, transitional arrangements do allow us to continue to deal with offences under the existing controls indefinitely. They will lapse only when they are replaced by controls under a new Dog Control Order.

4. Options

Most open land in the district is already designated under the Dogs (Fouling of Land) Act. The Clean Neighbourhoods and Environment Act now enables us to control all land which is in the administrative area of the Council and which is open to the air (which includes land that is covered but 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). The only exception now is land that is placed at the disposal of the Forestry Commissioners under section 39(1) of the Forestry Act 1967. On such land, dog control is managed by the Forestry commission. (Dog walkers are asked to refer to information signs in forests and woodlands. In some areas dog owners are asked to take dog mess home with them and in others they ask dog owners to "get a stick and flick"!).

There are a number of additional controls now available to the Council through dog control orders.

- 4.1 It is suggested that these controls may be applied to all land which is in the administrative area of the Council and which is open to the air (which includes land that is covered but 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) (again, the only exception being land that is placed at the disposal of the Forestry Commissioners under section 39(1) of the Forestry Act 1967).

The Council may also wish to prescribe an offence of “not putting and keeping a dog on a lead when directed to do so by an authorised officer”. This is seen as critical to enabling us to be more flexible and remove certain “dogs on leads” controls presently in place. It would be helpful to include the proposals in our consultation to enable us to properly assess whether or not they should become offences in this district.

5. Scope of powers

Appendix B lists land that is presently controlled by byelaws prohibiting dogs from entering or remaining.

Appendix C lists land that is presently controlled by byelaws requiring dogs to be kept on leads.

Appendix D revises appendix A with land that has not previously been controlled but is now proposed for control by prohibiting dogs from entering or remaining

Appendix E revises appendix B by removing land that has previously been controlled by requiring dogs to be kept on leads.

To impose controls, as described, on the land in Appendix D and Appendix E it is now necessary to make Dog Control Orders. To make orders we need to be able to show that such an order is both a necessary and proportionate response to problems caused by dogs and the people in charge of them. The District Council is also required specifically to consult with the relevant parish councils and the Highway Authority (in respect of rights of way) and others in respect of open access land. It must publish a notice describing its proposals in a locally circulating newspaper inviting representations within 28 days.

This is seen as a useful opportunity to tidy up our approach to dog control across the whole district.

As an additional control the Council may wish to add a restriction on the number of dogs that can be taken onto land in the district by one person. The statutory guidance suggests that expert opinion advocates a limit of six dogs, that being the maximum number that can reasonably be controlled by one person.

Legal Implications

There are no legal implications apparent in the report other than those highlighted in the body of the report.

Financial Implications

There are no significant budget implications as a consequence of this report.

Consultation on Reports to the Executive

Anti Social Behaviour Task and Finish Forum

Background Papers

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Executive Board
28 November 2007