



**Executive
12th March 2007**

**Report from the Director of
Environment and Culture**

For Action

ALL Wards Affected

The Fouling of Land by Dogs (Land Specified in the London Borough of Brent) Order 2007

Forward Plan Ref: E&C-06/07-032

1.0 Summary

- 1.1 The Clean Neighbourhoods and Environment Act 2005 (CNEA) has given Local Authorities additional powers to deal with offences relating to dogs and their control.
- 1.2 A new Dog Control Order under the Act will replace the existing one under the Dog Fouling of Land Act 1996. The Council may also adopt optional further powers in future under the CNEA.
- 1.3 Existing powers under the Dog Fouling of Land Act and The Byelaws for the Good Rule and Government in the London Borough of Brent 1977 (section 8) will lapse on the new Order being made and coming into force.

2.0 Recommendations

- 2.1 That the Council approve the making of The Fouling of Land by Dogs (Land Specified in the London Borough of Brent) Order 2007 with a commencement date of 1st May 2007.
- 2.2 To note that The London Borough of Brent Dogs (Fouling of Land) Order 1998 will cease to apply after the coming into force of the 2007 Order on 1 May 2007 (pursuant to Regulation 4(2)(a) of the CNEA (Commencement No1, Transitional and Savings Provisions)(England) Order 2006).
- 2.3 To note that section 8 of the Bye-Laws for the Good Rule and Government in the London Borough of Brent 1977 shall cease to have effect on the 2007 Order being made (pursuant to s64(3) of the CNEA)
- 2.4 That the Council approves a level of £75 for Fixed Penalty Notices issued under the new Order with a reduction to £50 for prompt payment.

3.0 Detail

3.1 Under Section 57 of 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. This will include:

- Council owned land
- Roads
- Pavements
- Grass verges
- Public footpaths
- Parks

3.2 The Dog Control Orders (Prescribed Offences and Penalties, etc.) Regulations 2006 made under the CNEA allow an Order to be made for five offences relating to the activities of dogs. These are:

- a) Failing to remove dog faeces
- b) Not keeping a dog on a lead
- c) Not putting, and keeping, a dog on a lead when directed to do so by an authorised officer
- d) Permitting a dog to enter land from which dogs are excluded
- e) Taking more than a specified number of dogs onto land

3.3 It is being proposed that the Dog Control Order is made solely for the purpose of failing to remove dog faeces at this time, since this would simply replace the existing Order and byelaws and would impose the same restrictions on dog owners as the current Order made under the Dogs (Fouling of Land) Act 1996. The Council already has sufficient evidence that a problem exists in relation to dog fouling in order to justify making such an order. The proposed Order is attached as Attachment 1.

3.4 The penalty for committing an offence contained in a Dog Control Order made under the CNEA is a maximum fine of level 3 on the standard scale (currently £1,000). However the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006 also provide that a fixed penalty may be offered in place of prosecution. This shall be not less than £50 and not more £80. Members are asked to approve a level of £75 with a reduced fee of £50 if paid promptly. This is in line with the fixed penalty provisions in force in StreetCare for depositing litter, unauthorised distribution of free printed matter, fly posting and graffiti. It is also in line with the level most likely to be agreed by Local Authorities affiliated to the West London Alliance. A prompt payment incentive will reduce administrative costs in debt collection.

3.5 It is envisaged that Animal Welfare Officers will enforce the Order along with Streetcare Officers, Police Officers, Police Community Support Officers and possibly Park Wardens. Before being able to enforce the provisions of the

new Order, Officers will need to be authorised under the scheme of delegation.

- 3.6 There are some exemptions from the penalties, namely:
- having a reasonable excuse for failing to comply with the order (such as a police dog on land to investigate or prevent crime)
 - where the owner (or person in control) of the land gives their consent
 - for registered blind people or other people with disabilities who make use of trained assistance dogs and whose disability would prevent them from removing the dog faeces
- 3.7 Making the new Dog Control Order will cause the existing order – The London Borough of Brent Dogs (Fouling of Land) Order 1998 – and also section 8 of Good Rule and Government in the London Borough of Brent 1977 bylaws to lapse and cease to be effective.
- 3.8 The Order will have no effect on the other controls available to the Council over the activities of dogs and their owners. The Council is required to consider whether the Order will be a necessary and proportionate response to a problem caused by the activities of dogs.
- 3.9 In 2006 Environmental Health received 106 complaints from residents in respect of dog fouling issues. Additionally, dog fouling is consistently rated as an issue of concern to Brent residents in every MORI poll. Making this Order is therefore considered to be a necessary and proportionate response. This question will need to be considered again if further orders under the Act, in relation to other controls over dogs, are considered.
- 3.10 Before making a Dog Control Order, an Authority must publish a notice describing the proposed order in a local newspaper and invite representations on the proposal and consult any other Authority as listed in Regulation 3(3)(b) and (c) of The Procedures Regulations 2006.
- 3.11 This was done on Thursday 30th November when a notice was placed in the Willesden and Brent Times and the Wembley Observer. A notice was also posted on the Environmental Health web page and on the Council's consultations web page. It was not necessary to consult with any other Authorities.
- 3.12 The consultation period ended on 28 December and the Council is obliged to consider representations made.
- 3.13 Only one comment was received. This was via e-mail in the form of a letter that was also published in the local newspapers. It concerned a proposed re-introduction of a dog licensing scheme in lieu of making a Dog Control Order. This is not legally possible and a reply was sent to the author.
- 3.14 Once the Order has been made, it is necessary, at least 7 days before it comes into force, to
- a) Publish a notice in a local paper circulating in the same area as the land to which the order applies stating that the order has been made and where it may be inspected and copies of it obtained.

b) Publish the same information as contained in the above notice on the Council's website.

c) Where practicable, place signs summarising the order in conspicuous positions on or near the land in respect of which the Orders will apply

3.15 Once the Order is made signs will be posted in hotspot areas to remind owners of the offence of failing to clear up after their dog. It is intended that 250 such signs will be purchased and erected in known problem areas within the first year. Signs are usually affixed to lamp columns.

3.16 Over time, old signs under the Dog Fouling of Land Act provisions will be replaced with the new signs and it is hoped that the positioning of the new signs will be logged on the lamp column database.

4.0 Financial Implications

4.1 No additional financial implications are anticipated. Enforcement of the Order will be carried out within existing budgets as will the cost of purchasing and erecting signs, about £600 to order an initial stock.

5.0 Legal Implications

5.1 The Order prescribes a penalty for breach of the Order which would be a fine set at level 3 of the standard scale, currently £1000. However, the legislation permits an authority to issue a fixed penalty notice as set out in this report, which if paid within the specified period would prevent prosecution under the Order.

6.0 Diversity Implications

6.1 An Equalities Impact Assessment has been undertaken and the only issue identified is that certain people with disabilities who rely on assistance dogs are exempted.

7.0 Staffing/Accommodation Implications (if appropriate)

7.1 There are no direct staffing implications as no additional resources are required.

Background Papers

- ✧ The Clean Neighbourhoods and Environment Act 2005
- ✧ The Clean Neighbourhoods and Environment Act 2005 (Commencement No 1, Transitional and Savings Provisions)(England)Order 2006
- ✧ The Controls on Dogs (Non-application to Designated Land) Order 2006
- ✧ The Dog Control Orders (Prescribed Offences and Penalties, etc.) Regulations 2006

- ✧ The Dog Control Orders (Procedures) Regulations 2006
- ✧ Dog control Orders – Guidance on Sections 55 to 67 of the Clean
Neighbourhoods and Environment Act 2005. DEFRA booklet
- ✧ The Environmental Offences (Fixed Penalties) (Miscellaneous
Provisions) Regulations 2006
- ✧ The Dog (Fouling of Land) Act 1996
- ✧ The Byelaws for the Good Rule and Government in the London Borough
of Brent 1977

Contact Officers

Any person wishing to discuss the report should contact Clive Dinsey,
Environmental Health, 020 8937 5257

Richard Saunders

Director of Environment and Culture

Attachment 1 - Copy of proposed Order

The Clean Neighbourhoods and Environment Act 2005

The Dog Control Orders (Prescribed Offences and Penalties, etc.)
Regulations 2006 (S.I.2006/1059)

The Fouling of Land by Dogs (Land Specified in London Borough of Brent) Order 2007

The London Borough of Brent hereby makes the following Order:

1. This Order comes into force on the **1st May 2007**
2. This Order applies to the land specified in the Schedule.

Offence

3. (1) If a dog defecates at any time on land to which this Order applies and a person who is in charge of the dog at that time fails to remove the faeces from the land forthwith, that person shall be guilty of an offence unless –

- (a) he has a reasonable excuse for failing to do so; or
- (b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so.

(2) Nothing in this article applies to a person who –

- (a) is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948; or
- (b) has a disability which affects his mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects, in respect of a dog trained by a prescribed charity and upon which he relies for assistance.

(3) For the purposes of this article –

- (a) a person who habitually has a dog in his possession shall be taken to be in charge of the dog at any time unless at that time some other person is in charge of the dog;
- (b) placing the faeces in a receptacle on the land which is provided for the purposes, or for the disposal of waste, shall be a sufficient removal from the land;
- (c) Being unaware of the defecation (whether by reason of not being in the vicinity or otherwise), or not having a device for or

other suitable means of removing the faeces shall not be a reasonable excuse for failing to remove the faeces;

(d) Each of the following is a “prescribed charity”-

- (i) Dogs for the Disabled (registered charity number 700454);
- (ii) Support Dogs (registered charity number 1088281);
- (iii) Canine Partners for Independence (registered charity number (803680).

Penalty

4. A person who is guilty of an offence under article 3 shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

[Date]

The Common Seal of)
THE MAYOR AND BURGESSES OF)
THE LONDON BOROUGH OF BRENT)
was hereunto affixed in the presence)

Solicitor: _____

SCHEDULE

Being land in the area of the London Borough of Brent (referred to below as “the Council”), namely:

- 1. All carriageways with a speed limit of 40 mph or less and adjoining footpaths and verges.
- 2. All unadopted roads, footpaths and rights of way to which and over which members of the public have access.
- 3. All Council-owned car parks.
- 4. All open spaces maintained by the Council.
- 5. All public gardens and parks and children’s playgrounds
- 6. All housing amenity areas and adjoining footpaths.
- 7. All churchyards, burial grounds and crematoria.
- 8. All land (not otherwise herein designated) which is maintained by the Council.

Executive Meeting 12 th March 2007	Version no.6.0 Date: 02/03/07
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