

TONBRIDGE & MALLING BOROUGH COUNCIL

LEISURE and ARTS ADVISORY BOARD

15 October 2007

**Report of the Chief Leisure Officer and the
Cabinet Member for Leisure, Youth and Arts**

Part 1- Public

Matters for Recommendation to Cabinet - Non-Key Decision (Decision may be taken by the Cabinet Member)

1 OUTDOOR LEISURE FACILITIES – DOG CONTROL ORDERS

Summary

This report updates Members on new powers under the Clean Neighbourhoods and Environment Act 2005 and invites Members to consider whether Dog Control Orders (DCOs) should be made on the Borough Council's outdoor leisure facilities.

1.1 Background

1.1.1 As previously reported to the Street Scene Advisory Board on 28 November 2006, The Clean Neighbourhoods and Environment Act 2005 introduced new powers for Local Authorities (LAs) to make DCOs for regulating aspects of dog ownership. Members of the Board recommended (Decision No: D060242MEM) that the Chief Leisure Officer will consider and report as necessary on the need for DCOs on leisure/amenity land owned/managed by the Borough Council.

1.2 Dog Control Orders

1.2.1 A range of new DCOs can be considered by LAs and cover the following issues:

- requiring the removal of dog faeces;
- requiring that dogs be kept on leads;
- requiring the person in charge of a dog, to put and keep a dog on a lead when directed to do so by an authorised officer;
- excluding dogs from land;
- specifying the maximum number of dogs that a person can take onto land.

- 1.2.2 DCOs are intended to take the place of designations under the Dogs (Fouling of Land) Act 1996, although any existing rules, byelaws and designations remain in force. Unlike byelaws, DCOs do not need to be confirmed by the Secretary of State and enforcement can be by fixed penalty notice, rather than prosecution.
- 1.2.3 The penalty for failure to observe the requirements of a DCO is a maximum fine on conviction of level 3 (currently £1,000). Alternatively, the opportunity to pay a fixed penalty can be offered in place of prosecution. The fixed penalty is £80 – discounted to £50 if paid within ten days.
- 1.2.4 A DCO can be made in respect of any land which is open to the air and to which the public is entitled or permitted to have access (with or without payment).
- 1.2.5 Enforcement can be undertaken by authorised employees and contractors of primary and secondary authorities and Police Community Support Officers. With regard to outdoor leisure sites, the primary Council staff authorised to issue fixed penalty notices are the Rangers at both Country Parks and the Council's Dog Warden.
- 1.2.6 The offences of fouling and dog exclusion, do not apply to dogs trained and relied on for assistance by disabled people.

1.3 The Current Position in Tonbridge and Malling

- 1.3.1 The Borough of Tonbridge and Malling (Dogs Fouling of Land) Designation Order 1997 requires the person in charge of a dog to clear up if the dog fouls on land to which the Order applies, this includes public open spaces, churchyards, cemeteries etc.

1.4 Proposed Dog Control Orders

- 1.4.1 Careful consideration has been given to the possible adoption of DCOs at outdoor leisure facilities and detailed proposals are shown at **[Annex 1]** that highlight the specific order, the proposed site and a justification for implementation. However, a brief overview of the proposals is outlined below:

- Requiring the removal of dog faeces – This will require all owners, subject to 1.2.5, to clean up after their dogs at all TMBC outdoor leisure sites/public open spaces.
- Requiring that dogs be kept on leads - Dogs will be required to remain on the lead in Haysden Country Park car park, Leybourne Lakes Country Park car park, along the path from the car park to the windsurfers' cabins, and the area from the windsurfers' cabins down to the internal gate, Tonbridge Cemetery and the Closed Churchyards in Tonbridge, subject to consultation with the respective churches.

- Requiring the person in charge of a dog, to put and keep a dog on a lead when directed to do so by an authorised officer – This will be required at all TMBC outdoor leisure sites/public open spaces.
- Land on which dogs are excluded – Dogs will be excluded from all designated children’s play areas, subject to 1.2.5 above. Members may wish to note that it has been the Borough Council’s policy to dissuade dogs from entering TMBC play areas for many years and that the exclusion proposals will not adversely affect any rights previously enjoyed by dog owners.
- Maximum number of dogs allowed - The maximum numbers of dogs under a single person’s control will be four.

1.5 Consultation

1.5.1 The Director of Health and Housing and the Chief Solicitor have been consulted on the proposals within this report and are supportive of the proposed approach.

1.5.2 In regard to their respective sites, the proposals have also been supported by the Leybourne Lakes User Panel and Haysden Country Park User Panel.

1.6 The Proposed Way Forward

1.6.1 Following Member consideration and approval of the proposed DCOs, as highlighted at 1.4 above, the Borough Council will be required to proceed with the formal process of adoption. It is proposed that the adoption procedure will be implemented in accordance with guidance published by the Department for Environment Food and Rural Affairs (Defra). This process will include a period of public consultation and is detailed in the table below:

	Date	Action
1.	15 Oct 2007	Report to the Leisure and Arts Advisory Board.
2.	Oct/ Nov 2007	Subject to the outcome of 1, publish a notice of proposed Dog Control Orders in a local newspaper, for public consultation (representations may be made for 28 days following publication).
3.	Dec 2007	Evaluation of all representations received.
4.	14 Jan 2008	Leisure and Arts Advisory Board consider representations and decide whether or not to advise the Executive to make DCO.
5.	16 Jan 2008	Cabinet considers recommendations of Advisory Board and, if satisfied, makes the DCO.

	Date	Action
6.	Jan/ Feb 2008	Subject to the outcome of 5, publish a notice in a local newspaper, and on the Council's web site stating that the Order has been made.
7.	Feb/ Mar 2008	If DCO made new signage put in place - signs must be placed, so far as is reasonably practicable, on land to which DCO applies*.
8.	Feb/ Mar 2008	Any DCOs come into force at least seven days after the published notice.

* This signage will be installed on the Council's principal public open spaces and children's play areas only, because it would be impractical to put signs on every single public open space (around 500).

1.7 Legal Implications

- 1.7.1 The provisions of the Clean Neighbourhoods and Environment Act 2005, the Dog Control Orders (Prescribed Offences and Penalties etc.) Regulations 2006 and the Dog Control Orders (Procedures) Regulations 2006, as summarised in this report, must be observed when making DCOs.
- 1.7.2 In order to ensure the appropriate legal processes are adhered to, adoption of DCOs will be carried out in liaison with the Chief Solicitor and the Director of Health and Housing.

1.8 Financial and Value for Money Considerations

- 1.8.1 There are costs associated with making Dog Control Orders (advertising and site signage) though it is anticipated that funding will be allocated from existing revenue budgets.

1.9 Risk Assessment

- 1.9.1 The Borough needs to take a balanced approach to problems caused by dogs, which properly reflects the interests of dog owners and those who do not own dogs.
- 1.9.2 Members may be aware that a legal challenge has been made in opposition to DCOs recently adopted by another primary/secondary authority in the area. The challenge has been made primarily on the grounds that the correct procedures were not followed when making the Order. This issue reinforces the need to follow recommended guidance.

1.10 Recommendations

1.10.1 It is, therefore, **RECOMMENDED** that Members:

- 1) consider the proposed Dog Control Orders as detailed at **[Annex 1]** to the report and determine whether they wish to recommend that the Executive commence the process to make DCOs; and
- 2) agree the proposed adoption procedure as outlined in the report.

The Chief Leisure Officer confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and Policy Framework.

Background papers:

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Nil

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