

# Forest Heath District Council

(This report is a key decision. This report has been subject to appropriate notice of publication under the Council's Access to Information Rules)

## Report of the Cabinet Members for Health, Leisure and Culture and Environment and Waste

**CABINET**

**31 JULY 2012**

**CAB12/019**

### **CREATION OF A DOG CONTROL ORDER AT ASPAL CLOSE LOCAL NATURE RESERVE** (Forward Plan Reference JUL12(B)/13)

#### **Summary and reasons for recommendation(s)**

There is local demand for the Council to make a Dog Control Order for Aspal Close Local Nature Reserve (LNR), under the Clean Neighbourhoods and Environment Act 2005. The demand has arisen from an ongoing issue with dog fouling on the site, and the creation of the order would enable effective enforcement options which do not currently exist. In addition to authorised FHDC Officers, Police Community Support Officers (PCSOs) would have the ability to issue fixed penalty notices in respect of dog fouling.

In order to make a Dog Control Order the Council must publish notices inviting representations on the proposal, consult other primary and secondary authorities in the area and consider any representations made concerning the proposal.

To create the order, authority will need to be delegated to an appropriate level to consider any representations made at the end of the consultation period and confirm the order.

Once an Order has been made the Council must publish a notice in a local newspaper circulating in the same area as the land to which the order applies stating the details of the Order. It should also publish a copy on its website and place signs around the site informing the public of the offence of dog fouling.

It should also be noted that fixed penalty notices on their own will not solve the issue of dog fouling outright. However, as part of a wider approach they do provide an extremely useful tool both in awareness raising and as deterrent.

If successful at Aspal Close, a Dog Control Order could be introduced to cover the whole District for the same offence, following the same procedure as laid out in this report.

#### **Recommendation(s)**

**It is recommended that Cabinet:**

- 1. Approves the process of creating a Dog Control Order at Aspal Close Local Nature Reserve to create the offence of failing to remove dog faeces; and**
- 2. Delegates authority to the Cabinet Members for Health, Leisure and Culture and Environment and Waste, in consultation with the Head of Community Services, to authorise the creation of any future dog control order taking into consideration any representations received.**

**Contact  
Details**

<b><u>Contact Details</u></b>	<b><u>Portfolio Holders</u></b>	<b><u>Lead Officer</u></b>
Name:	Councillor Nigel Roman Councillor Warwick Hirst	Simon Phelan
Title:	Environment and Waste Health, Leisure and Culture	Head of Community Services
Telephone:	01638 712679 01638 664252	01638 719774
E mail:	<a href="mailto:Nigel.roman@forest-heath.gov.uk">Nigel.roman@forest-heath.gov.uk</a> <a href="mailto:Warwick.hirst@forest-heath.gov.uk">Warwick.hirst@forest-heath.gov.uk</a>	<a href="mailto:Simon.phelan@forest-heath.gov.uk">Simon.phelan@forest-heath.gov.uk</a>

**How will the recommendations help us meet our strategic priorities?**

1. Reducing dog fouling will contribute to economic growth by increasing the attractiveness of Aspal Close as a tourist destination and help make it easier to market as a high quality Nature Reserve. Schools will also be more willing to access the site for education visits.
2. Undertaking this process will support and empower community development through responding to local needs and involving the local community and parish council in decision making.
3. The ability for Police Community Support Officers to enforce this order, in addition to the council's existing resources, will enable the council to be more efficient and effective at tackling this issue without an increase in resources. In addition by working closely with Suffolk Constabulary, additional measures can also be developed, such as awareness raising campaigns.

**Wards affected**

4. Eriswell and the Rows.

**Key issues**

5. Aspal Close is a Local Nature Reserve owned and managed by Forest Heath District Council. A Local Nature Reserve (LNR) is a statutory designation made under Section 21 of the National Parks and Access to the Countryside Act 1949. To qualify for LNR status, a site must be of importance for wildlife, geology, education or public enjoyment.
6. The reserve has a long history of community interest which is coordinated via the Aspal Close User Group (administered by FHDC), with representations from the Parish Council, local residents association, local football club and other local users and volunteers.
7. The principle recreational use of the site is for dog walking, which has been the case for many years. The high volume of dogs on the site has led to problems around the impacts of dog fouling, and this has been an ongoing issue for local residents and stakeholders for some time.

8. The site is well provisioned with dog waste bins, no fouling signs and a number of local on site initiatives have been used to attempt to raise awareness and reduce dog fouling. However, fouling remains an issue.
9. Existing enforcement powers are limited in respect of dog fouling at this site. The Dogs (Fouling of Land) Act 1996 was historically the primary piece of legislation to enable fixed penalty notices to be issued, but this act contained a number of excluded land types which Aspal Close fell under, therefore it was not possible to issue notices under this act.

### **Legislative Framework**

10. The Dog Control Orders (Prescribed Offences and Penalties, etc.) Regulations provide for a number of offences which may be prescribed in a dog control order. In the case of Aspal Close it is advised to create the offence of failing to remove dog faeces.
11. The penalty for committing an offence contained in a Dog Control Order is a maximum fine of level 3 on the standard scale (currently £1,000). Alternatively, the opportunity to pay a fixed penalty may be offered in place of prosecution.
12. Aspal Close is designated as Open Access Land under the Countryside and Rights of Way Act 2000. As such there are special consultation and notification requirements when making Dog Control Orders on such land.
13. The procedure for making a Dog Control Order is set out in regulation 3 of the Dog Control Orders (Procedures) Regulations 2006. It is important that this procedure is adhered to, since a failure to do so will invalidate the order.
14. The proposed dog order will only cover Aspal Close Local Nature Reserve and will not set a precedent for any other sites in the District.

### **Evidence Base**

15. It is 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. A failure to give due consideration to these factors could make any subsequent Dog Control Order vulnerable to challenge in the Courts.
16. In the case of Aspal Close there is a strong evidence base for the problem of dog fouling on the site for a significant period of time. In particular through the involvement of stakeholders in the regular Aspal Close User Group meetings as well as other public meetings for which records have been kept.

### **Consultation**

17. If an authority is considering making a Dog Control Order which would affect open access land it must consult the appropriate access authority, Local Access Forum and Natural England.

18. Before it can make a Dog Control Order, an authority must consult any other primary or secondary authority within the area in which the Order is being made. In this case this will include Suffolk County Council, and Beck Row, Holywell Row and Kenny Hill Parish Council.

### **Enforcement**

19. Forest Heath District Council currently has an enforcement remit within the Environmental Services section, with officers authorised to issue fixed penalty notices for a number of offences. The same arrangements can be used to issue fixed penalty notices under a Dog Control Order.

20. If a Dog Control Order is created this would extend the same powers to Police Community Support Officers. This greatly enhances the ability for a Local Authority to enforce Dog Control Orders.

21. Local Police have been consulted regarding the creation of a Dog Control Order and are supportive of the initiative and have requested the powers to issue fixed penalty notices if a Dog Control Order is created.

### **Notices**

22. Authorities must publish a notice describing the proposed order in a local newspaper circulating in the same area as the land to which the order would apply and invite representations on the proposal.

### **Consideration**

23. At the end of the consultation period the authority must consider any representations that have been made. If it then decides to proceed with the order, it must decide when the order will come into force. This must be at least 14 days from the date on which it was made.

### **Other options considered**

24. Previous campaigns and initiatives (i.e. Status Quo) have not proved effective without the ability for enforcement. The site already has a good provision of dog waste bins and notices.

### **Community impact** (Diversity and Equality, Sustainability, Other)

25. Undertaking this process will support and empower the community through responding to local needs and involving the local community and parish council in decision making.

26. The community will also benefit from a cleaner, greener and safer local environment.

## **What consultation has been undertaken and what were the outcomes?**

27. Initial consultation has taken place with the Parish Council and also the Aspal Close User Group. It is through these meetings that the issue has been highlighted and the request for investigating a Dog Control Order was raised.

## **Financial and resource implications**

28. The creation of a Dog Control Order can be made within existing resources. A cost will be incurred for placing the required notices in the local press.

29. New signage for the site will have a financial implication but will be covered within existing budgets. In some cases the new signage will replace old obsolete signs, so additional long term maintenance costs for the site will be not be significantly affected.

30. An additional level of resource may be required to enforce the order, however, previous initiatives to address dog fouling on the site in conjunction with Environmental Services have had limited success without enforcement options. Therefore future initiatives are likely to have greater impact with the ability to take enforcement action.

31. It should also be noted that through the creation of a Dog Control Order, Local Police Community Support Officers will be able to provide a valuable additional resource for enforcement which currently does not exist.

## **Risk management implications**

32. Failure to create a Dog Control Order could significantly reduce the Councils ability to control dog fouling in the future, particularly if the problem increases.

## **Legal/Policy implications**

33. The land concerned is in the ownership of Forest Heath District Council. The ability to make such an order is contained within existing legislation.

34. Forest Heath District Council has the power to make Dog Control Orders, provided that it is satisfied that an order is justified, and have followed the necessary procedures.

## **Documents attached**

35. None.

## **Background papers**

36. None.