

WIRRAL COUNCIL

REGENERATION AND ENVIRONMENT POLICY AND PERFORMANCE COMMITTEE

3 DECEMBER 2014

SUBJECT:	DANGEROUS DOGS; AN UPDATE ON THE CURRENT LEGAL FRAMEWORK, CURRENT POWERS, RESOURCES AVAILABLE AND RECENT INCIDENTS.
WARD/S AFFECTED:	ALL WARDS
REPORT OF:	KEVIN ADDERLEY, STRATEGIC DIRECTOR REGENERATION & ENVIRONMENT
RESPONSIBLE PORTFOLIO HOLDER:	COUNCILLOR BERNIE MOONEY, ENVIRONMENT & SUSTAINABILITY
KEY DECISION?	No

1.0 EXECUTIVE SUMMARY

1.1 This report was requested by Councillor George Davies following a question raised by Councillor Stuart Kelly at the meeting of the full Council (20th October 2014) when Councillor Kelly advised that Dog Control Orders could be used to deal with a dog attack that had been reported in the local press. This report provides an update to Members on the legal framework and the current powers that are available to control dangerous dogs. The report also provides details of the number of reported dangerous dog incidents that have occurred within Wirral over the last five years. Consideration has also been given to the procedure for adopting further powers under the Anti-Social Behaviour, Crime and Policing Act 2014 to control dangerous dogs or irresponsible dog ownership through the implementation of a number of measures. The report provides an outline of the procedure in respect of each of these and the issues that would need to be considered as part of the process

2.0 BACKGROUND AND KEY ISSUES

2.1 Concerns from Members have been raised about irresponsible dog owners who fail to control their dogs. These concerns were recently highlighted following a particularly unpleasant incident involving uncontrolled dogs in Birkenhead Park this summer (July) when a dog was severely injured during the attack. This incident was widely covered in the local press and the case was investigated by the Police for possible offences under Section 3 of the Dangerous Dogs Act 1991 (as amended).

3.0 DANGEROUS DOG LEGISLATIVE FRAMEWORK

3.1 With regard to the regulation of dangerous and out of control dogs that attack people or other dogs and foul open land, historically the Council, Police and RSPCA have had a variety of powers to take a range of actions under various pieces of legislation including the Offences against the Person Act 1861, Dogs Act 1871, Guard Dogs Act 1975, Dangerous Dogs Act 1991 (as amended), Control of Dogs Order 1992, Dogs (Fouling of Land) Act 1996, Clean Neighbourhoods and Environment Act 2005 and the Animal Welfare Act 2006 . Some of these powers have been replaced and/or amended by the Anti-Social Behaviour, Crime and Policing Act 2014, part of which is specifically aimed at dealing with irresponsible dog owners who allow their dogs to attack people, other dogs, or assistance dogs. These new powers were introduced in May 2014 and in October 2014.

3.2 Dog owners can now face prosecution if their dog attacks a person in their home or on any private property, except if they attack a trespasser. The maximum sentences for allowing a dog to attack someone have also been substantially increased. The maximum prison sentences in England and Wales are now:

- Up to 14 years, from two years, for a fatal dog attack.
- Up to five years, from two years, for injury.
- Up to three years if an assistance dog is attacked.

The Dangerous Dogs Act 1991 is amended to ensure irresponsible dog owners will also be liable for prosecution regardless of where an attack takes place, even in their own home. This will give protection to those who provide services in the community – housing officers, postal workers, nurses, utility workers - as well as people visiting in the area. For the first time the Act is amended to include a specific offence relating to attacks on assistance dogs.

3.3 Whilst the Anti-Social Behaviour Crime and Policing Act 2014 contains provisions specifically related to dangerous dogs, it has also rationalised the existing suite of tools and powers to tackle anti-social behaviour generally, reducing 19 existing remedies to 6. Some of the existing remedies that have now been repealed include measures dealing with dogs and irresponsible dog owners, however, but it is expected that the powers that have replaced them and which relate to ASB generally will be utilised to deal with the same issues. DEFRA has published a detailed Practitioner's Manual which highlights the possible uses of the new remedies when dealing with dangerous dogs or irresponsible dog owners.

3.4 The changes also see new preventative powers for the police and local authorities so they can act early to stop dog attacks before they occur. These measures include steps the dog owner can take to address their own or their dog's behaviour, for example:

- Attending dog training classes.
- Repairing fencing to their property to prevent the dog escaping.
- Requiring their dog to be muzzled in public.

Further measures to help tackle irresponsible dog ownership will come in to force in April 2016 when microchipping will be a legal requirement for all dogs in England, (from March 2015 in Wales).

3.5 The Police have primary responsibility for all dangerous dog complaints and a Police Officer or Wirral Council Animal Control Officer may seize a banned dog or a dog that is dangerously out of control in a public or private place at any time. It is however very rare for the Police to prosecute a dog-on-dog or other animal offence, and historically the Council would lead on such attacks if there was evidence to support the case. Unfortunately, significantly reduced resources in the Animal Control and Welfare Service of Environmental Health over the last three years now limits the capability to deal with these incidents when they take place. In line with our current enforcement policy, Wirral Council response to reports of Dangerous Dogs, would also be subject to factors associated with the individual case, ranging from issuing a verbal warning to prosecuting.

3.6 Merseyside Police have overall authority for dealing with reports of dangerous dogs. During normal working hours the Councils Animal Control & Welfare Officer would, on a best effort basis, investigate complaints of aggressive dogs, dogs dangerously out of control, or any dog attacks reported to them. Outside normal working hours, reports would be made to Merseyside Police.

4.0 DANGEROUS DOG INCIDENTS

4.1 In the last five years the total number of complaints about dangerous dogs received by the Council's Animal Control and Welfare Service is 345. As table 1 illustrates the number of complaints was fairly constant between 2009 and 2012 with a noticeable reduction in 2013. The year to date figures are indicative that the number of complaints for 2014 could be lower again.

Table 1 – Dangerous Dog complaint 2009-2014

Dates	Complaints received
01/04/2009 – 31/03/2010	65
01/04/2010 – 31/03/2011	68
01/04/2011 – 31/03/2012	62
01/04/2012 – 31/03/2013	68
01/04/2013 – 31/03/2014	56
01/04/2014 – 27/10/2014	26
Total	345

5.0 ANTI-SOCIAL BEHAVIOUR CRIME AND POLICING ACT 2014

5.1 Parts 1 – 6 of the Anti-social Behaviour, Crime and Policing Act 2014 introduce legislation to deal with anti-social behaviour in a flexible and responsive way. Part 7 makes the changes to the Dangerous Dogs Act 1991 referred to above.

5.2 The Act repeals a number of tools to deal with anti-social behaviour such as ASBOs and Dog Control Orders. In the main, the powers that are being replaced were concerned with specific kinds of behaviour, e.g. littering, graffiti, irresponsible dog ownership etc but the new tools are focussed more on the impact of the behaviour rather than the nature of the behaviour and therefore have a more general application.

5.3 The new powers that have applicability to Dog Control are:-

- **Community Protection Notices**
- **Civil Injunctions**
- **Criminal Behaviour Orders**
- **Public Spaces Protection Orders**

5.4 The Department for Food, Environment and Rural Affairs has issued a comprehensive manual in relation to the new Act and dealing with irresponsible dog ownership. Appendix 1 to this report is a draft flow chart on prosecution contained within the manual which outlines a suggested procedure for dealing with dog related issues and indicates where these powers may be relevant.

6.0 COMMUNITY PROTECTION NOTICES (CPNs)

6.1 CPNs provide the low-level formal power for dealing with dog problems such as irresponsible ownership, that do not meet higher thresholds, but which pose concern for local residents and the authorities. CPNs can address behaviour that has a negative effect on anyone in the community. The quick intervention process allows early engagement with individuals, improves their understanding of responsible dog ownership, thereby improving the behaviour of both the owner and the dog. An authorised person must issue a written warning to the individual or body before issuing a CPN. This check is in place for a number of reasons. It ensures that suitable evidence can be provided to meet the threshold test of persistent or continuing behaviour. It also acts as a safeguard against potential criticisms that individual officers are too premature with enforcement action.

6.2 It may be appropriate, in some instances, to prohibit a dog owner from doing certain things. Prohibitions could include, **but are not limited to**:

- Prohibiting dog and owner from entering certain areas – perhaps near a school or designated children's play area

- Not allowing a dog to be exercised in certain areas at certain times; e.g. immediately before schools start and immediately after schools finish for the day
- Prohibiting inappropriate people from having charge of a dog; e.g. it may not be appropriate for a small child to take charge of a large dog

It is most likely that to change the behaviour of an individual and, potentially, a dog, it may be necessary to stipulate requirements of an individual or organisation. Requirements could include, but are not limited to;

- Keeping the dog on lead in certain areas (e.g. built-up areas, some park areas)
- Muzzling the dog at certain times (e.g. near children / other animals e.g. dogs, cats, livestock)
- Neutering the dog
- Microchipping the dog (microchipping is soon to be compulsory, see Annex B)
- Attending suitable training classes, or seeking advice on behavioural modification and/or management
- Fixing fences and securing their property to prevent dogs straying and other dogs accessing property
- Installing a letter cage to protect postal workers delivering post
- Cleaning kennels that are emitting odours and disposing properly of the dog related waste, where statutory nuisance thresholds are not met

When including requirements in a notice, officers should be aware of the costs and burdens on the individual and their likely ability to meet these. Unreasonable requirements are grounds for appealing a notice.

Breach of a CPN can have a number of consequences. It is a criminal offence and can lead upon conviction to a fine not exceeding level 3 on the standard scale (currently £1000) in the case of an individual or £20,000 in the case of a body/organisation. Upon conviction the Court could make an order that the defaulter forfeit anything used in the commission of the offence (which could include having to hand possession of a dog to an authorised officer). An order could also be made to allow the local authority to take remedial action to prevent such behaviour from continuing (e.g. repairing a fence which a dog has breached and subsequently caused a nuisance to those in the locality).

If remedial action is available to land that is open to the air the Act gives power for the local authority to enter such land, effect the necessary remedial work and to charge the defaulter for the cost of doing so.

A fixed penalty notice of up to £100 could be issued by an officer authorised by the local authority to issue CPNs.

If necessary the local authority could make an application to the Magistrates' Court to seize anything (e.g. a dog) that is believed to have been used in the commission of the offence of failing to comply with a CPN.

7.0 CIVIL INJUNCTIONS

- 7.1 These have replaced, amongst other things, ASBOs and are formal court orders that seek to prevent an individual from engaging in ASB. As with the CPN, the Injunction can be issued against an individual who has committed a range of anti-social behaviour, one of which is dog-related.
- 7.2 The Injunction enables officers to deal with behaviour that is of a higher level, where the CPN may not be the appropriate tool to use and more formal action may be required, for example, a neighbour using an aggressive dog to intimidate residents outside their home, formal action may be required against an owner whose dog has already bitten a person or has either already killed or seriously injured another animal. In such cases it is likely that officers would have already tried to engage with the dog owner about their conduct but have failed to stop.
- 7.3 However, these more serious incidents may mean that other dog-specific legislation is more appropriate, such as section 2 of the Dogs Act 1871 or section 3 of the Dangerous Dogs Act 1991 and officers should consider these options alongside or instead of an Injunction.
- 7.4 Breach of a civil injunction is a contempt of court and is punishable for adults by a fine or by up to 2 year's imprisonment. For minors the Youth court could impose a supervision order or, as a last resort, a detention order for offenders.
- 7.5 While other powers contained within the Act have come in to force It is envisaged that they will become available from early 2015.

8.0 CRIMINAL BEHAVIOUR ORDERS

- 8.1 The Criminal Behaviour Order (CBO) allows authorities to deal with the most serious and persistent offenders where their behaviour has brought them before a criminal court. Authorities apply via a prosecutor to the courts to have a CBO put in place. An order can require individuals to comply with prohibitions to stop the anti-social behaviour and address the underlying causes of their anti-social behaviour. The court must be satisfied that the individual has engaged in behaviour that caused or was likely to cause anti-social behaviour, that is, 'harassment, alarm or distress' to any person and that the CBO will help prevent the offender from engaging in such behaviour. Breach of an order is a criminal offence and carries a maximum penalty of five years imprisonment and/or an unlimited fine.
- 8.2 Anti-social behaviour with dogs can be fuelled by and run alongside other behaviour that has a serious and harmful impact on victims and communities. In

this case, the CBO can be used in the cases of serious offending by the most destructive individuals.

9.0 PUBLIC SPACES PROTECTION ORDERS

- 9.1 The primary purpose of the Public Spaces Protection Order (PSPO) is to empower local authorities to deal with anti-social behaviour that adversely affects other people using the same public space, whether it is a park, town centre or rural footpath. PSPOs replace a number of other specific orders, thereby streamlining the process of making orders.
- 9.2 Local authorities can restrict persistent behaviour that adversely affects the community, by making a PSPO in consultation with the police and interested parties. Breaches can be dealt with by a fixed penalty notice of up to £100 or by prosecution which carries a maximum level 3 fine (which is currently £1000).
- 9.3 The PSPO replaces Dog Control Orders, under which a local authority could, for example, exclude dogs from designated areas and require dogs to be kept on leads. The PSPO will continue to allow these kinds of restrictions to be put in place, but will also allow the local authority to be more flexible when responding to local problems involving dogs.
- 9.4 PSPOs can only apply to public places. This means any place to which the public, or any section of the public, on payment or otherwise, have access to as of right or by virtue of express or implied permission, e.g. a public park, a beach or a children's play area within a public park.
- 9.5 A PSPO can:
 - exclude dogs from designated areas (e.g. a children's play area in a park);
 - require dog faeces to be picked up by owners;
 - require dogs to be kept on leads;
 - restrict the number of dogs that can be walked by one person at any one time; and
 - put in place other restrictions or requirements to prevent any other activity that is considered to have a detrimental effect on the quality of life of those in the locality, or is likely to have such an effect.
- 9.6 A PSPO may only prohibit or impose requirements that are reasonable to prevent or reduce the detrimental effect from continuing, occurring or recurring.

10.0 CURRENT ACTION BEING TAKEN TO TACKLE THE PROBLEM OF DANGEROUS DOGS IN PUBLIC PARKS

10.0 To help address the issue of dangerous dogs in our parks, Wirral's Animal Control and Welfare Officer is working with Park Managers to assist in dog incidents in the parks. We are also working closely with The Friends of Birkenhead Kennels who are promoting responsible dog ownership to the public. This partnership is currently focused on Birkenhead Park.

11.0 CONCLUSIONS

11.1 That Members note that the number of dangerous dog complaints received by Wirral Council has not increased over the last five years and that for 2013-2014 the number of complaints reduced. Furthermore the trend for 2014-2015 is projected to be lower again.

11.2 Despite the trend of reducing complaints Wirral Council is still on average receiving more than one complaint a week about dangerous dogs. To help deal with these ongoing complaints the Council has now given authorisation under the Anti-Social Behaviour Crime & Policing Act 2014 to a wide range of suitable officers who can enforce CPN's or PSPO. CPNs can be used to address behaviour that has a negative effect on anyone in the community. For example, in the cases of dogs out of control in a park, alarming visitors to the home, straying and causing damage, or even a dog that distresses, even injures other animals. The PSPO replaces Dog Control Orders, under which a local authority could, for example, exclude dogs from designated areas and require dogs to be kept on leads.

11.3 These powers will be used in addition to the proactive work being undertaken by our Animal Control and Welfare Service who are working with the Park Managers, and Friends of Birkenhead Kennels to promote responsible dog ownership and to speak with dog owners who have had issues with their dogs.

11.4 Members should give consideration as to whether officers need to undertake further work to examine strategically at how these new powers under the Anti-Social Behaviour Crime & Policing Act 2014 could be best used to reduce these ongoing complaints or whether any further work should be postponed to assess the impact of the new powers. As these new powers have only just come in to force it is too early to determine as to whether or not the implementation of these new powers will over time reduce the number of complaints that Wirral Council receives.

12.0 RELEVANT RISKS

12.1 No risks have been identified.

13.0 OTHER OPTIONS CONSIDERED

13.1 No other options have been considered.

14.0 CONSULTATION

14.1 No external or public consultation has been undertaken at this time as this preliminary report has been prepared as an update for the Regeneration and Environment Policy and Performance Committee on the current legal

framework, current powers, resources available and incidents statistics concerning dangerous dogs. The appropriate statutory and or non-statutory consultation will take place when it is decided to implement any of the new powers conferred by the Anti-Social Behaviour Crime and Policing Act 2014.

15.0 OUTSTANDING PREVIOUSLY APPROVED ACTIONS

15.1 There are no outstanding actions that relate to this report.

16.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

16.1 There are none arising directly from this report. These would be considered when planning and implementing specific schemes, projects or when considering requirements that might be supervised by such groups.

17.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

17.1 To ensure any CPN or PSPO could be effectively enforced across the borough the Council has given authorisation to a wide range of suitable officers. The Act states that such officers can issue CPNs and issue fixed penalty notices (FPNs) upon breach of a CPN or PSPO.

17.2 Members will also be aware of a current budget option which is out for consultation for the commissioning of littering and dog fouling Fixed Penalty Notices. If approved, consideration could be given to including the enforcement of PSPOs into the scope of the tender, given the overlap between that legislation and the Anti-Social Behaviour Crime and Policing Act 2014. The FPN has already been set at the highest possible fine level to avoid financial implications for this approach.

17.3 For information FPNs gives the offender the opportunity to discharge liability for the relevant offence. The amount of the fixed penalty can be set by Wirral but must be no more than £100. Payment of the fixed penalty may be made within 14 days of the date of the notice. A discounted penalty can be offered if the fixed penalty is paid within a lesser number of days, to be specified by the authority. FPNs in Wirral will be £100 or £60 if paid within 10 days.

18.0 LEGAL IMPLICATIONS

18.1 There are a number of different powers and duties conferred upon the local authority by the Anti-Social Behaviour Crime & Policing Act 2014. There are also a number of appeals procedures or challenges that may be instituted as a result of a relevant decision being made in pursuance of the legislation.

19.0 EQUALITIES IMPLICATIONS

19.1 There are no equality implications arising from this report.

20.0 CARBON REDUCTION AND ENVIRONMENTAL IMPLICATIONS

20.1 There are no implications arising directly from this report.

21.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

21.1 There are no Planning implications arising directly from this report.

22.0 RECOMMENDATION/S

22.1 Members are requested to note the contents and provide views on this report.

23.0 REASON/S FOR RECOMMENDATION/S

23.1 The training for the new powers under the Anti-Social Behaviour Crime & Policing Act 2014 has only just been delivered and the teams that have these new powers are currently reviewing their working practices to determine how and when to use these powers. It is therefore not possible at this time to advise Members on how effective these new powers will be to tackle the dangerous dog issues in Wirral. However, from the information available there is no evidence to suggest a worsening situation in Wirral in respect of numbers of dangerous dog complaints being received.

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APPENDICES

BACKGROUND PAPERS/REFERENCE MATERIAL

BRIEFING NOTES HISTORY

Briefing Note	Date
Not applicable	N/A

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Not applicable	N/A

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