

Item No. 8.2	Classification: Open	Date: January 26 2005	Meeting Name: Council Assembly
Report title:		Introduction of Dogs (Fouling of Land) Act 1996 and fixed penalties under said Act	
Ward(s) or groups affected:		All wards in Southwark	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATIONS

1. That the council assembly agrees to the designation of land under the Dogs (Fouling of Land) Act 1996, the adoption of the said Act and the issuing of fixed penalties under the said Act, in the areas of land specified below:
 - a) All footpaths, footways and carriageways maintained at public expense,
 - b) All grass verges, shrub beds and tree bases maintained at public expense,
 - c) All parks, play areas and leisure land owned by the council,
 - d) All parts of council owned housing estates including grassed areas, shrub beds, play areas, balconies, footpaths, roadways, stairwells and walkways to which the public have access and which are open to the air on at least one side,
 - e) All external areas of council owned public buildings,
 - f) The grounds of Camberwell New Cemetery, Brenchley Gardens, SE23 5RD; Camberwell Old Cemetery, Forest Hill Road SE22 and Nunhead Cemetery, Linden Grove, SE15.
2. That council assembly notes that the effect of adopting the land will be to revoke and replace an existing byelaw.
3. That council assembly notes the comprehensive borough wide approach being taken to tackle dog fouling, outlined in paragraphs 14-19.

BACKGROUND INFORMATION

4. Dog fouling has been identified as a major concern for local people through MORI polls, community consultation including community councils, street action teams, Southwark Environment Forum, schools and StreetLeader conferences. However, dog fouling is not only a nuisance but also a real danger, in particular to small children, and can cause serious illnesses.
5. The council have tackled the issue so far by using posters with the slogan 'Bag it and Bin it', stencils on the street, and letters to residents who let their dogs foul. It is felt that now it is time to be able to take enforcement action against offenders.
6. The Dogs (Fouling of Land) Act 1996 came into force in August 1996. To date the council has not gone through the formal process for the adoption of the Act. The Act allows local authorities to make an order to make it an offence for dog owners not to remove and clean up their animal's mess on any area of land which is open to the air on at least one side and which the public have access to with or without payment.

7. The maximum fine on conviction for the offence of not removing or cleaning up animal mess is a fine not exceeding £1000. The Act also allows the council the option of allowing offenders to pay a fixed penalty (£50 at present), which would discharge any liability to court action and conviction.
8. It is proposed to apply the Act on the public highway, housing estates, leisure and parkland, cemetery land and land surrounding public buildings as specified in paragraph 1. It is also proposed to take up the option of allowing offenders to pay a fixed penalty to discharge liability to court action and conviction, and for the fixed penalty to be at the current national rate.
9. Prior to the introduction of this Act, local authorities have had to adopt byelaws to regulate dog fouling. Southwark's byelaws for the public highway were adopted in 1966. Under these byelaws it is an offence to allow dogs to foul the footway only.
10. Dog byelaws for Southwark's parks were introduced in 1996 creating areas where dogs must be on a lead, where dogs are banned and where owners must clear up after their dogs (poop-scoop byelaw). These byelaws currently carry a penalty of £1000. The Dogs (Fouling of Land) Act 1996 provides that the poop-scoop byelaw (but not the dogs on leads or dog ban byelaws) will cease to have effect once the order designating land takes effect, or 10 years after the adoption of the Act, whichever is the earlier.

Adopting the Dogs (Fouling of Land) Act 1996

11. In order to ensure that there is no confusion about what byelaw or act applies and where, it is proposed to introduce the Dogs (Fouling of Land) Act 1996 on the public highway, housing estates, leisure and park land, cemetery land and land surrounding public buildings as specified in paragraph 1.
12. In order to introduce the Act regulations made under the Act specify the procedure to be followed. The process is set out in the table below.

1	Advertise a Notice of Intention in the local press and allow 28 days for objections and representations.	Done 7/12/04 SLP and 9/12/04 SN
2	Consider representations and objections.	Done 10/01/05, see paragraphs 24 to 26
3	Order is made by council assembly, stating the date on which the order takes effect (to be not less than 28 days following the making of the order).	26/01/05
4	Place a Notice of Making of the Order in the local press giving the date of introduction of the order at least 7 days prior to it taking effect	After order has been made

KEY ISSUES FOR CONSIDERATION

Policy Implications

13. The introduction of the Dogs (Fouling of Land) Act 1996 supports the council priority of making Southwark cleaner and greener.
14. The introduction of the Dogs (Fouling of Land) Act 1996 will form part of a larger strategy to combat dog fouling and promote responsible dog ownership across all parts of the borough including streets, housing estates and parks.

15. The strategy consists of three discrete streams:

- Increasing the number of dog bins
- Raising Awareness
- Delivering Enforcement

Increasing the number of dog bins

16. To promote responsible dog ownership and encourage a ‘bag it and bin it’ culture, it is intended to provide an additional 450 dog bins throughout the borough, 100 on highways, 300 on housing estates and 50 in parks. Collection from dog bins will be undertaken by Southwark cleaning in relation to highways and housing estates and by Quadron in parks.

Raising Awareness

17. This focuses on the dangers and antisocial aspects of dog fouling utilising the ‘Do we have to rub your nose in it?’ campaign as its basis. Posters have been widely distributed throughout the borough; information leaflets are available at all council buildings and awareness-raising dog days are held throughout the year. The dog days promote responsible dog ownership and are run in conjunction with Battersea Dogs Home, National Canine Defence League and local dog training centres.

Delivering Enforcement

18. By introducing the Dogs (Fouling of Land) Act 1996, the council will be raising public expectations about being able to take action against dog owners who do not clean up after their dogs. Therefore it is proposed that street care officers of the waste management service, parks wardens, the animal warden, community wardens and housing department staff will enforce the act in the form of fixed penalty notices throughout the borough.

19. It is also proposed to erect a limited number of signs in known fouling areas as part of the enforcement campaign to ensure that the consequences of not clearing up after your dog are clearly understood.

Resource implications

20. All costs associated with the introduction and administration of enforcement of the Dogs (Fouling of Land) Act 1996 will be met through existing resources. **Table 1** outlines costs involved in introducing the Act and the estimated annual costs of enforcing and administrating the act.

Table 1

	£,000	Budget
Publicity for designation of land and adoption of Act	2	Existing client enforcement budget
Administration and enforcement staff costs for 1 targeted enforcement operation per month for dog fouling	10	Work is in existing work plans so budgeted in existing client enforcement budget
One enforcement officer having responsibility for dog fouling enforcement	5	In workplan so contained within existing client enforcement budget

21. It is estimated that the income generated will be £5,000 from 100 fixed penalty notices. The income will be invested back into education and enforcement of the Dogs (Fouling of Land) Act 1996.
22. The one off costs of establishing the project to combat dog fouling are outlined in table 2 below and will be met through existing budgets of the waste management service, parks service and housing management.
23. Ongoing costs for collection from dog bins will again be met through existing service budgets.

Table 2

	£,000
Provision of 450 dog bins	75
Publicity Campaign	25
Dog Days	5
Signs	5
Total	110

Consultation

24. A public Notice of Intention for the designation of land and the adoption of the Dogs (Fouling of Land) Act 1996 was published in the South London Press on Tuesday 7th December and the Southwark News on Thursday 9th December. The Notice asked for representations to be received no later than Friday 7th January.
25. Two representations were received in response to the notice of intention. The first was in support of the adoption of the Dogs (Fouling of Land) Act 1996, from a StreetLeader in Rotherhithe who is concerned about dog fouling in his local area.
26. The second representation was from a resident of Peckham Rye. Again the resident supported the introduction of the Act, but was concerned that the wording of the designation of the land omits some Southwark owned and maintained lands in the Peckham Rye area. The resident was assured that the lands she mentioned were covered by the order, and that the designation of lands had been approved by our borough solicitor who was aware that we were intending to designate all public land open to the air on at least one side and to which the public are permitted to have access (see paragraphs 28 to 32).

Equal Opportunity implications

27. The Act does not apply to anyone who is registered as a blind person.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Borough Solicitor

Designation of Land

28. The Dogs (Fouling of Land) Act 1996 permits the council to designate any land in their area which is 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).

Land may be designated either specifically or by description.

29. It is recommended that the following areas be designated.
- a) All footpaths, footways and carriageways maintained at public expense,
 - b) All grass verges, shrub beds and tree bases maintained at public expense,
 - c) All parks, play areas and leisure land owned by the council,
 - d) All parts of council owned housing estates including grassed areas, shrub beds, play areas, balconies, footpaths, roadways, stairwells and walkways in common use to which the public have access and which are open to the air on at least one side,
 - e) All external areas of council owned public buildings,
 - f) The grounds of Camberwell New Cemetery, Brenchley Gardens, SE23 5RD; Camberwell Old Cemetery, Forest Hill Road SE22 and Nunhead Cemetery, Linden Grove, SE15.
30. Council assembly should note that stairwells, balconies and walkways are capable of designation only insofar as
- The public have access
 - They are open to the air on at least one side
31. Enclosed walkways and stairwells, or those on council estates access to which is restricted by a door entry system, will not be able to be covered by the Act.
32. There is no distinction between designating land which the council owns and that which it does not. However, where a person in charge of a dog fails to remove faeces from designated land it is not an offence if the owner, occupier or other person or authority having control over the land has consented (generally or specifically) to his or her failing to do so.

Offence

33. An offence is committed where a dog defecates at any time on designated land and a person who is in charge of the dog at that time fails, without reasonable excuse, to remove the faeces from the land forthwith (i.e. immediately). Placing the faeces in a receptacle on the land which is provided for the purpose or for the disposal of waste is sufficient removal.
34. The person who commits the offence is the person who is in charge of the dog. A person who habitually has a dog in his possession shall be taken to be in charge of the dog, unless at that time some other person is in charge of the dog.
35. 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 for removing the faeces, shall not be a reasonable excuse.

Procedure

36. The procedure for making the order and the form of the order is set down in the Dogs (Fouling of Land) Regulations 1996/2762 and the form of the Fixed Penalty Notice (FPN) is designated by the Dog Fouling (Fixed Penalties) Order 1996. The effect of these regulations is summarized by the report and this concurrent.

37. Under the council's constitution (Article 4.02j), a decision which has the effect of amending or revoking a byelaw is reserved to council assembly. As set out in paragraph 10 of the report, the effect of making the order will be to revoke a byelaw. For this reason, the final order must be made by the council assembly.
38. However, the decision to initiate the process was not reserved to council assembly. The report initiating the process was reserved to the executive member under the Part 3D, paragraph 7 of the constitution.
39. Other legal matters are adequately covered in the body of the report.

Director of Finance

40. Council assembly should note that the director of environment and leisure confirms that there will be no financial impact on the council's resources from the designation of land under the Dog (Fouling of Land) Act 1996 or from the adoption of the said act and enforcement as recommended in this report.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Original Copy of South London Press 7/12/04 containing public notice for designation of the land	Waste management, Manor Place Depot	Gemma Gallagher
Original copy of Southwark News 9/12/04 containing public notice for designation of the land	Waste management, Manor Place Depot	Gemma Gallagher
Representations from Public Notice	Waste management, Manor Place Depot	Gemma Gallagher

AUDIT TRAIL

Lead Officer	Gill Davies	
Report Author	Phil Davies	
Version	Final	
Dated	11/01/05	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Borough Solicitor & Secretary	Yes	Yes
Director of Finance	Yes	Yes
Executive Member	Yes	None
Date final report sent to Constitutional Support Services	11/01/05	