

Committee(s):	Date(s):
Epping Forest and Commons Committee Open Spaces and City Gardens Committee	12 November 2013
Subject: Review of Pilot Study - Use of Secondary Authority Powers to introduce Dog Control Orders at Burnham Beeches.	Public
A Report of: The Superintendent of Burnham Beeches and Stoke Common	For Discussion
<u>Summary</u>	
<p>This report informs members of the proposal to introduce Dog Control Orders at Burnham Beeches National Nature Reserve using the recently acquired powers provided under Secondary Authority status.</p> <p>Recommendations</p> <p>1. Member's views on the content of this report be received.</p>	

Main Report

Background

1. Burnham Beeches is located in Buckinghamshire and is designated as a Site of Special Scientific Interest, National Nature Reserve and Special Area of Conservation. In recent years it has become an increasingly popular area for dog walking due in part to the very special nature of the site and in particular because it remains one of the very few open spaces in the District that provides free car parking Monday to Friday each week (excluding bank holidays).
2. In 2010 Members of the Epping Forest and Commons Committee approved the Burnham Beeches management plan 2010 – 2020. That document sets out the detail by which the City intends to achieve a balance between the needs of recreation and conservation whilst meeting its legal obligations.
3. The growing attraction of the site to dog walkers and the associated challenges this presents has been managed at the site in a variety of ways. In 2004 and following extensive consultation with visitors, the site introduced a 'Dog Behaviour Code' that set out the standards of dog behaviour expected of owners when visiting the site. More recently the Open Spaces Dog Policy and associated agreement with the Kennel Club restated the City's commitment to healthy exercise and good behaviour for dogs and their owners.
4. The Common Council of the City of London was designated as a Secondary Authority for the purposes of Chapter 1 of Part 6 of the Clean Neighbourhoods

and Environment Act 2005 from 31st May 2012. This enables the Common Council to make Dog Control Orders (DCO's) in its open spaces outside the City where the relevant Primary Authority has not already made an Order in respect of the same offence on the same land.

5. South Bucks District Council (SBDC) is the Primary Authority for Burnham Beeches and has confirmed that it does not intend to exercise these powers in the foreseeable future.
6. Given the sensitivity of Burnham Beeches and its national conservation designations it was agreed that Burnham Beeches should pilot on behalf of the Open Spaces Department, the approach to implementation of DCO's. Appendix 1 sets out a framework and timetable for how consultation both informal and statutory, together with development of an enforcement strategy and implementation of DCO's, will need to be managed.
7. Dog Control Orders will be among those abolished by the relevant provisions of the Anti-social Behaviour, Crime and Policing Bill currently before Parliament.
8. Discussions are taking place with officials about the extent to which the Corporation could be permitted to make use of the new powers for the protection of public spaces in respect of its open spaces outside the City
9. The new powers will replace an array of existing powers, including anti-social behaviour orders and injunctions, drinking banning orders, individual support orders, litter clearing notices, defacement removal notices, 'Section 30' dispersal orders, premises closure orders, gating orders and dog control orders.
10. The new powers are likely to be introduced in autumn 2014 and whilst they will alter the detail of how dog control issues are managed it is sensible to assume that the principle of greater control over dog behaviour on public open spaces will remain. In addition the preparation for the introduction of the new powers is likely to require a similar approach to that of DCO's particularly in terms of informing the visiting public, consulting on their implementation and achieving improvements through enforcement.
11. On that basis it remains appropriate for Burnham Beeches to continue to pilot the introduction of DCO's to 'live test' the broad challenges presented by the use of enforcement tools to improve dog behaviour. This learning can then be applied across the Open Spaces as required albeit it would be sensible to do so via the replacement Act.

Current Position

12. Burnham Beeches continues to welcome dog walkers and provides the following services and facilities:
 - An internationally important Open Space for their enjoyment.
 - A 'Dog Behaviour' Code.
 - A Ranger Service that understands the needs of dog walkers (including the management of lost dogs) and other site users.

- Dog bins/bags service for free disposal of dog waste.
 - A 'dog friendly' zone at the café including water bowls, lead ties and water bowls.
 - A range of dog friendly events.
13. The latest visitor numbers survey (2012) indicates that there are 585,000 visits to the site each year. The survey also indicates that around 215,000 dog visits occur each year amounting to 960 dogs/ha each year.
14. A report produced by Footprint Ecology demonstrates that Burnham Beeches is under immense and growing visitor pressure and broadly outlines the impact of dogs in terms of their existing and potential impact on wildlife, habitats and visitors.
15. The majority of visiting dog walkers attempt to ensure their pets behave according to the approved Dog Behaviour Code. However, a significant number find it a challenge to meet these standards and this manifests itself in the following common issues:
- Dogs disturbing/chasing wildlife/livestock or similar
 - Lost dogs (reported as such by site visitors)
 - Dogs running loose with 'no owner in sight'
 - Dogs 'disturbing/intimidating' other site users.
 - Injured dogs (fights, traffic accidents)
 - Dog mess being left on site
 - Dogs without collars and identification(a byelaw offence)
 - Dog noise – (nuisance barking)
16. 415 incidents have been formally recorded in the last 2 years at the Beeches and in all probability this represents only a fraction of the total number occurring each year. Each incident places a demand on the site's resources.

Byelaws

17. Burnham Beeches has specific byelaws that set out the legal standards of behaviour expected of dog owners when on site. They require that:
- Dogs are kept under effective control.
 - Dogs wear a collar that bears the name and address of the owner.
 - Hunting or chasing of 'animals' game or birds does not occur.
18. The definition of 'effective control' is both subjective and problematic when it comes to the management of dog behaviour issues. It is for that reason that the site's Dog Behaviour Code defines effective control as being 'within sight of the owner at all times and coming back immediately when called'. However, this is not a legal definition and therefore difficult to enforce.
19. Contraventions of byelaws are dealt with at the local Magistrate's Court and a fine is applied if found guilty. This process is time consuming and can appear to be very heavy handed. For this reason the site's byelaws tend only to be used for the most serious dog related offences such as attacks on visitors,

wildlife and livestock. Byelaws have therefore proved to be ineffective for preventing repetitive, nuisance type behaviours.

20. For these reasons it is recommended that the existing byelaws are complemented by DCO's. Only byelaws that deal with the same offence on the same land as a DCO would lapse. The existing byelaws at Burnham Beeches would therefore remain in force.

Proposed Dog Control Orders

21. It is proposed that all five of the different types of DCO's (listed below) would be appropriate for Burnham Beeches and used to form the basis of the informal and formal consultation processes i.e.

Schedule 1. *Failure to remove dog faeces.* This control could be applied to the entire Open Space.

Schedule 2. *Failure to keep a dog on a lead in an area so designated.* This control could be applied to part or all, of the site

Schedule 3. *Failure to put and keep a dog on a lead when directed to do so by an authorised officer (the length of the lead can also be stipulated).* This control could be applied to part or all, of the site.

Schedule 4. *Permitting a dog to enter land from which dogs are excluded.* An example of where this control might be applied is the existing fenced enclosure area adjacent to the café.

Schedule 5. *Taking more than a specified number of dogs on to the land.* We are proposing a maximum of 4 dogs.

22. DCO's can be seasonal or applied at different periods in the year or week At Burnham Beeches it is proposed that they would all apply all year round. DCO's can also apply to the whole site or only part of the site. Members will note that it is proposed that Schedules 1 and 5 should be applied to the whole site and Schedules 2, 3 and 4 are to be applied to specific areas.
23. It is possible to formalise exemptions for 'assistance dogs' where DCO's are in place.
24. Schedule 5 may be used to minimise the attractiveness of the open space to commercial dog walkers

Consultation

25. Before making DCO's the Epping Forest and Commons Committee must be satisfied that their introduction is justified and proportionate. As part of that process the Superintendent must consult all other Primary and Secondary

Authorities in the area and publish a notice of the proposals in a local newspaper, allowing at least 28 days for representations. This is known as the statutory consultation process

26. Those seeking to introduce DCO's on their land are also encouraged to seek public feedback prior to the formal consultation. This latter process is referred to as 'informal consultation'.
27. At Burnham Beeches the informal consultation process is highly significant due to the large number of visitors and the site's importance and sensitivities as a National Nature Reserve and Special Area of Conservation. Concern over the impact of dog walking on the rare habitats and wildlife of the Beeches is a substantial influence on the areas to be covered by Schedules 2 and 3.
28. The Burnham Beeches Consultation Group has been involved with the informal consultation process from a very early stage and remains generally supportive of the introduction of all 5 DCO Schedules albeit there are individual differences of opinion as to the exact delivery details.
29. The Superintendent has liaised closely with the Kennel Club during the consideration of DCO's and currently there is disagreement about the impact of dog walking on wildlife (and visitor experience in general) and hence what a reasonable use of Schedules 2 and 3 would look like 'on the ground'. It is the Kennel Club's view that there is little or no harmful impact caused by heavy use of the Nature Reserve for dog walking. They therefore wish for minimal use of Schedule 2 in particular.
30. The City's view is the opposite of the Kennel Club's and it believes that proportionate use of Schedule 2 must include consideration of the impact of dog walking on wildlife as well as on the majority of people who visit the site without a dog. This matter will be resolved at a meeting with the Kennel Club in December 2013.
31. To provide some objectivity to this discussion the Superintendent has commissioned a survey of visitors to Burnham Beeches to establish their views. This survey is on-going and on completion will inform the final geographic spread of all DCO Schedules across the site.

Enforcement

32. Once the issue highlighted above has been settled the matter of enforcing DCO's can be considered. The main issues are discussed below.
33. The penalty in relation to any offence in a DCO is, on summary conviction, a fine not exceeding level 3 on the standard scale – currently £1,000. However the legislation also allows the option of offering the offender a Fixed Penalty Notice (FPN) as a means of avoiding prosecution in the Magistrate's Court.
34. The amount of the fixed penalty payable is the amount specified by the Authority which made the DCO – or if no amount is specified, £75. The amount would typically stand at between £50 and £80 per offence perhaps with an

early payment reduction of 50% if paid within 10 days. The precise amounts – should DCO's be introduced at Burnham Beeches – have not yet been finalised but is likely to err towards the maximum.

35. Primary Authorities can enforce their own DCO's. Secondary Authorities can enforce their own DCO's, and those made by the Primary Authority. Enforcement is by authorised officers – which includes authorised employees, PCSO's and other persons authorised under arrangements made with the Authority. FPN's are payable to the Primary or Secondary Authority whose officer gave the notice. Again, further thought needs to be given to the most appropriate arrangements for Burnham Beeches, should DCO's be introduced.
36. The use of FPN's would be appropriate for most offences. Automatic prosecutions would be reserved for the most serious incidents. It is hoped that this 'twin approach' will be a significant help in reducing the number of dog related incidents and restoring the balance between the various needs of site visitors and wildlife.
37. As part of the proposals to introduce DCO's it is necessary to produce an 'Enforcement Strategy'. The final version of this strategy will be reported to the Epping Forest and Commons Committee in January 2014.
38. The aim of the Enforcement Strategy will be to encourage responsible dog ownership on the site by proportionate enforcement of DCO's and thereby reduce the number of dog related incidents. A typical strategy would contain the following elements:
 - **Statements** of intent, and summary of all consultations
 - **Descriptions** of powers to be used, and how, where and when they are to be applied
 - **Fines and enforcement** procedures and onwards to magistrate's court if required
 - **Resources** - budget, staffing, training
 - **Administration** - record keeping and use of receipts

Financial and Risk Implications

39. The cost of the DCO consultation and enforcement process is estimated at £21,000 including officer time, training, consultation costs and the provision of appropriate signage and other materials. These costs are being met from local risk budgets and are set out in Table 1 below:

Table 1

Activity	Cost
Research and informal Consultation (Footprint Ecology)	£7000
Management time (estimated at 30 days)	£7500
Staff Training (est)	£4000

Administration (set up)	£2500
Total estimated costs	£21,000

40. An income of around £2,000/annum is anticipated from Fixed Penalty Notice payments.
41. The development of appropriate administration procedures is key to the success of the proposals. The Superintendent is considering this matter with the City Solicitor and District Enforcement who currently oversee the site's Parking Charge Notice administration.
42. There will then be an on-going cost to administer the scheme although it is believed that income from the FPN's will cover this.

HR Implications

43. Staff at Burnham Beeches have been consulted throughout this process and are aware of the implications on their roles. Minor adjustments to the staff structure have also been made.
44. The Rangers at Burnham Beeches currently issue parking tickets for failure to 'pay and display'. They will also enforce the DCO's (perhaps with the assistance of local PCSO's) and issue the FPN's. This will require additional 'appropriate training'.

Strategic Implications

45. The proposals support the Strategic aims of the City and Open Spaces Department by:
 1. **Quality.** Providing, safe, secure and accessible Open Spaces and services on behalf of London and the Nation.
 2. **Inclusion.** Involving communities and partners in developing a sense of place through the care and management of our sites
 3. **Environment.** Delivering sustainable working practices to promote the variety of life and protect the Open Spaces for the enjoyment of future generations
 4. **Promotion.** Promote opportunities to value and enjoy the outdoors for recreation, learning and healthy living
 5. **People.** Manage, develop and empower a capable and motivated work force to achieve high standards of safety and performance.

Conclusion

46. Dog walking at Burnham Beeches has grown in popularity over recent years. Incidents related to dog walking are recorded by staff and remain high despite proactive management such as the site's Dog Behaviour Code, waste removal and other 'dog friendly' services.
47. The site's byelaws have not been effective in reducing repetitive, nuisance behaviour and the use of DCO's at Burnham Beeches is proposed as a complementary enforcement mechanism.

48. DCO's offer additional controls and a more flexible approach to enforcement compared to the byelaws. This provides an opportunity to establish a balance between the needs of the many site users.
49. The Kennel Club are opposed to extensive use of Schedules 2 and 3 and to that end the Superintendent is seeking the views of the public before statutory consultation and introduction.
50. The cost of implementation of DCO's at Burnham Beeches is currently estimated at £21,000.
51. The use of Senior Officers to manage the pilot DCO process has also placed a heavy demand on local resources and this is likely to be the case for any Open Spaces that elect to follow suit. However, the lessons learned and issues resolved by the pilot scheme should help to reduce this demand in future albeit it is likely to remain a significant commitment.
52. The Superintendent intends to seek final approval for the implementation of DCO's at Burnham Beeches in January 2014 with the aim of introducing them on site in April 2014.
53. Dog Control Orders will be among those abolished by the relevant provisions of the Anti-social Behaviour, Crime and Policing Bill (ABCP) currently before Parliament and greater clarity on the implications of this is desirable. The Remembrancer will continue to monitor progress of the ABCP through parliament and advise officers of its implications

Appendix 1. Timetable for the delivery of Dog Control Orders at Burnham Beeches

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