
**PUBLIC SPACE PROTECTION ORDERS – DOG CONTROLS – MEMBER
BRIEFING NOTE**

Reason for the Report

1. A report titled 'Public Space Protection Orders – Dog Controls' is due to be received by Cabinet at its meeting on the **5 July 2018**. The report has been submitted to Cabinet for the following reasons:
 - To consider widening enforcement powers, in order to deliver a cleaner and more sustainable environment across Cardiff by supporting the use of Public Space Protection Orders as defined in Cardiff Council's Policy Statement;
 - To consider authority to consult with members of the public and other relevant stakeholders to introduce a Public Spaces Protection Order (PSPO) under Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014. The purpose of the order is to improve and replace current outdated dog controls powers across the City of Cardiff.

Background

2. Cardiff Council's Policy Statement for Public Space Protection Orders is attached to this report as **Appendix A**.
3. PSPO's are available to Local Authorities to deal with specific nuisance problems in particular areas that are having, or are likely to have, a detrimental effect on the quality of life for those who live, work or play within the locality. An order can prohibit

or restrict certain activities and are designed to ensure that the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.

4. The PSPO is different from other powers available under the Anti-Social Behaviour, Crime and Policing Act 2014 as they are led by the Council and concentrate on the identified problem behaviour. The final restrictions placed on a PSPO should be evidence based and shaped by the opinions of key stakeholders and the individuals who live, work or visit the public spaces.
5. The Council can make a PSPO in consultation with the Police and other relevant bodies who may be affected. The Order will have effect for a period of no more than three years. However, the Council may extend the Order for a further three years if there are reasonable grounds for doing so.
6. Once a PSPO is adopted by the Council, sanctions are available for persons who breach certain prohibitions within the order. A breach of the order can be enforced initially by way of a simple fine under a fixed penalty notice. If this fine is not paid then the enforcement action can be escalated through criminal powers available by way of a criminal prosecution through the Magistrates' Court. A maximum fine of level 3 or £1,000 may be imposed. Alternatively, the opportunity to pay a Fixed Penalty Notice (FPN) up to a maximum of £100 may be offered in place of prosecution and to avoid a criminal conviction.
7. The current fixed penalty notice for dog fouling is £80. The value of fines associated with dog controls from byelaws vary but enforcement has not taken place for a number of years.
8. Rhondda Cynon Taff County Borough Council and Denbighshire County Council have used the PSPO's to assist with the control of dogs. There are also other Councils, which have used the order to address access to public land, alcohol and intoxicating substances.
9. The byelaws currently in place in Cardiff were created under The Public Health Act 1875, The Open Spaces Act 1906, The Local Government Act 1972 and The Dog (Fouling of Land) Act 1996. The requirements of these byelaws are:

- That dogs are controlled, so as not to cause a nuisance within open spaces, which came into effect in 1964;
 - The prohibition of dog fouling within designated areas across Cardiff;
 - The exclusion of dogs within cemeteries, which came into force in 1986; and,
 - The exclusion of dogs from children's playgrounds and certain pleasure grounds and open spaces, which came into force in 1991 and was updated in 1993.
10. The Anti-Social Behaviour, Crime & Policing Act 2014 repeals previous legislation and will eventually repeal The Dog (Fouling of land) Act 1996, which dealt with dog fouling and its enforcement. The Anti-Social Behaviour legislation enables a PSPO to introduce enforcement rules on the presence of dogs, as well as wider controls to deal with anti-social behaviour on land accessible to the public.
11. Council officers will be able to enforce the restrictions and requirements. In addition, police officers and Police Community Support Officers will have the ability to enforce the order, although Council officers will deal with the issuing of FPN's.
12. Dog fouling is unsightly and unpleasant and in turn can lead to serious illness in humans, such as Toxocariasis, from direct contact with the faeces on the ground which can also lead to blindness. Particular concern is raised in relation to children and sports users using parks and open spaces.
13. The majority of dog owners are responsible, clean up after their dogs and keep them under control. However, a minority of irresponsible dog owners create significant problems. Each year the Council receives many complaints in relation to dog fouling and out of control dogs in public places, which is a significant concern.
14. The Council continues to receive a significant number of complaints in relation to dog fouling from local residents and Councillors. From April 2016 to April 2017 there were over 500 complaints made to the council in relation to dog fouling. **Appendix B** shows examples of complaints in parks relating to dog control in Cardiff.
15. From reviewing the byelaws and complaints it is proposed the first phase of dog controls are:

- The prohibition of dog fouling in all public places owned and/or maintained by the Council;
 - The exclusion of dogs in all enclosed playgrounds, marked sports pitches and Schools, which are owned and/or maintained by Cardiff Council;
 - A requirement that dogs are kept on leads within all Cemeteries owned and/or maintained by Cardiff Council;
 - A requirement allowing authorised officers to give a direction that a dog(s) be put and kept on a lead if necessary.
16. The introduction of dog controls to remove antisocial behaviour are consistent with the Well-being Goals under the Wellbeing of Future Generations (Wales) Act 2015:
- A healthier Wales – a society in which people’s physical and mental wellbeing is maximised and in which choices and behaviours that benefit future health are understood;
 - A Wales of cohesive communities – attractive, viable, safe and well-connected communities.

Issues

17. The current legislation for dog fouling, The Dog (Fouling of Land) Act 1996, are currently not supported via Magistrates Courts and will eventually be completely repealed due to there being more up to date legislation that the Council should be utilising, specifically the Anti-Social Behaviour, Crime and Policing Act 2014.
18. The Council has only brought a small number of prosecutions to court in the last five years. However, although the Council continues to issue fines relating to dog fouling, there will become a time when the Council are challenged more broadly and therefore a PSPO covering dog fouling is required to allow for the continued issuing of FPN’s and prosecutions.
19. Public Spaces Protection Orders are reviewed every three years to ensure that they are effective in addressing anti-social behaviour and the issues have not been displaced to other areas. The current byelaws are not reviewed, nor enforced and

there is no method in place or any legal obligation for these to be reviewed by the Council, to ensure that they are effective in addressing certain issues across Cardiff.

20. The introduction of a PSPO in respect of dog controls will replace existing byelaws currently in place to control dogs in certain areas across Cardiff. The current byelaws are outdated, with some dating back to 1964. Since the implementation of byelaws, boundaries and land ownership has changed, which is why it is essential to implement a PSPO to give uniformity and a consistent approach to the control of dogs across specific identifiable areas across Cardiff.
21. If Public Spaces Protection Orders are not introduced to replace old legislation, this could prevent the Council from fully achieving its Corporate commitments within the Community Strategy 2011 - 2021 and the Corporate Plan. A dog control PSPO will allow Cardiff Council to demonstrate continued commitment towards achieving a cleaner, more attractive and sustainable environment.
22. The Cabinet by approving the recommendations of the report support a full and extensive consultation with residents and relevant stakeholders. This will allow the Council to introduce orders, which are relevant, necessary and consistently enforced across Cardiff.
23. The consultation response will include the methodology, statistics, comments made, key findings, the number of responses and recommendations / amendments to the proposed dog controls.
24. A list of consultees have been identified in **Appendix C**. The consultation will include opening and closing dates of when consultees can respond on this matter. This will be via letters, online surveys, the Cardiff Council website, newspaper adverts, email and telephone. All means of consulting will be translated bilingually into Welsh and English languages. For those who cannot access the internet, other options will be advertised, such as the option to send a letter or e-mail.
25. A PSPO would supersede the current byelaws shown in relation to the control of dogs across Cardiff shown in Appendix D. Therefore, there would be a need for these byelaws to be revoked.

Cabinet Paper - Legal Implications

26. Under the Anti-social Behaviour, Crime and Policing Act 2014, a Local Authority, after consultation with the public, Police, Crime Commissioner and other relevant bodies, are able to make a Public Spaces Protection Order (PSPO) if evidence of a nuisance exists.
27. Under Section 59 of the act, a Local Authority may make a PSPO if satisfied on reasonable grounds that two conditions are met. The first condition being:
 - a) Activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality; or,
 - b) It is likely that activities will be carried on in a public place within that area and that they will have such an effect.
28. The second condition being that the effect, or likely effect, of the activities:
 - a) Is, or is likely to be, of a persistent or continuing nature;
 - b) Is, or is likely to be, such as to make the activities unreasonable; and,
 - c) Justifies the restrictions imposed by the notice.
29. A Public Spaces Protection Order identifies the public place referred to and sets out a number of conditions, such as:
 - a) Prohibiting specified things being done in the area;
 - b) Requiring specified things to be done by persons carrying on specified activities in that area; or,
 - c) Covering both of those prohibitions.
30. Prohibitions or requirements may be imposed if they are reasonable to impose through the order:
 - a) To prevent the detrimental effect referred to from continuing, occurring or recurring; or,
 - b) To reduce the detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.

31. An interested person may appeal to the High Court to question the validity of a PSPO, or a variation of an Order. An appeal must be made within the period of six weeks beginning with the date on which the Order or variation is made.
32. Articles 10 and 11 of the Human Rights Act 1998 regarding freedom of expression and freedom of assembly and association have been considered and no issues have been identified.
33. The Council must satisfy its public sector equality duties under the Equality Act 2010 and at the same time as or following the outcome of consultation it will be necessary to undertake an Equality Impact Assessment to ensure that the Council has properly understood and assessed the potential impact of the proposed PSPO in terms of equality.
34. The enforcement of breaches of the order will be initially enforced through the use of a simple fine under a fixed penalty notice and then to criminal prosecution in the Magistrates' Court if not paid. It is expected that the issue of fixed penalties and the prosecution of cases will be income generating.
35. Provision will need to be made for any additional legal resources that are required.
36. All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council eg. standing orders and financial regulations; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

Cabinet Paper - Financial Implications

37. The report is recommending the commencement of a public consultation period for which there will be no direct financial implications. The outcome of the consultation will be presented in a further report to Cabinet which will allow definitive enforcement

proposals to be confirmed. This will include an assessment of any associated financial implications. Based on the processes outlined in this report the Directorate consider that the introduction of the PSPO can be achieved within existing resources.

38. If there is a significant increase in the number of prosecutions undertaken by the Council then further discussions with other Service Areas, in particular Legal Services may be required to consider the implications arising from this potential additional activity.

Recommendations

39. The recommendations made in the Cabinet report include:
- To undertake a 6 -12 week public consultation exercise on the proposal to introduce a Public Spaces Protection Order (PSPO) under the Anti-Social Behaviour, Crime and Policing Act 2014 to introduce dog controls in areas across the Cardiff and to report back to Cabinet.
 - To propose the consultation for dog control specifically looks at:
 - The prohibition of dog fouling in all public places owned and/or maintained by the Council,
 - The exclusion of dogs in all enclosed playgrounds, marked sports pitches and Schools, which are owned and/or maintained by Cardiff Council.
 - A requirement that dogs are kept on leads within all Cemeteries owned and/or maintained by Cardiff Council.
 - A requirement allowing authorised officers to give a direction that a dog (s) be put and kept on a lead if necessary,
 - Setting the fixed penalty fine for breach of the order to the maximum permitted of £100.
 - To endorse revoking the current byelaws in Cardiff.

Way Forward

40. Members are to note the contents of the Member briefing note.

Legal Implications

41. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct legal implications. However, legal implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any legal implications arising from those recommendations. All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. Scrutiny Procedure Rules; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

Financial Implications

42. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct financial implications at this stage in relation to any of the work programme. However, financial implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any financial implications arising from those recommendations.

RECOMMENDATION

The Committee is recommended to:

- i. Note the contents of the Member briefing note.

DAVINA FIORE

Director of Governance & Legal Services

27 June 2018