

PUBLIC SPACE PROTECTION ORDERS – CONTROL OF DOGS

Reason for the Report

1. The scope of the report and joint meeting is to consider the content of the Cabinet paper on 'Public Spaces Protection Orders – Dog Controls' and the recent public consultation exercise on 'Public Spaces Protection Orders (PSPOs) – Proposed Dog Controls' that ended on the 22nd October 2018. In particular the scrutiny will look to:
 - Review the delivery of the public consultation exercise;
 - Review the results and findings of the public consultation exercise;
 - Receive feedback from key stakeholders and the public on the public consultation exercise, its range of proposals and future proposals;
 - Discuss a range of potential options that the Council might take to address any concerns about dog control that were identified in the Cabinet paper and public consultation exercise;
 - Where appropriate, provide feedback on dog control to the Cabinet to help inform future decision making.

Background

2. A paper titled 'Public Spaces Protection Orders – Dog Controls' was presented to Cabinet on the 12 July 2018; a copy of this report and its appendices is attached to this document as **Appendix 1**.

3. Cardiff Council has responsibility for the management and maintenance of public spaces across the city. These spaces include parks, play areas, adopted highways, sports grounds, schools and cemeteries.
4. The Council has a large number of parks and open spaces that are used by dog walkers. The majority of dog owners are responsible and clean up after their dogs, however, there are persistent issues across Cardiff - specifically where dog faeces are not removed by dog owners.
5. The Council has in recent years delivered a number of initiatives aimed at reducing dog fouling, for example, public educational campaigns. Despite the efforts made, dog fouling continues to be a concern for many Cardiff residents.
6. Public Space Protection Orders 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.
7. A Public Space Protection Order 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 Public Space Protection Order should be evidence based and shaped by the opinions of key stakeholders and the individuals who live, work or visit the public spaces.
8. The Council can make a Public Space Protection Order in consultation with the Police and other relevant bodies who may be affected. The Public Space Protection 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. There is no limit on the number of times that a Public Space Protection may be reviewed and / or renewed.

9. Once a Public Space Protection Order 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.
10. A maximum fine of level three or £1,000 may be imposed. Alternatively, the opportunity to pay a Fixed Penalty Notice up to a maximum of £100 may be offered in place of prosecution and to avoid a criminal conviction.
11. 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.
12. Rhondda Cynon Taff County Borough Council and Denbighshire County Council have used Public Space Protection Orders to assist with the control of dogs. Other Councils have used Public Space Protection Orders to address issues such as access to public land, alcohol and intoxicating substances.
13. 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.
14. 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 Public Space Protection Order 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.

15. Should a Public Space Protection Order be introduced, the Council would be able to enforce the restrictions and requirements. In addition, Police Officers and Police Community Support Officers would have the ability to enforce the order, although Council officers would deal with the issuing of Fixed Penalty Notices.
16. Dog fouling is unsightly, unpleasant and can lead to serious illness in humans such as Toxocariasis - this can develop from direct contact with the faeces on the ground which can potentially lead to blindness. Particular concern is raised in relation to children and sports users using parks and open spaces.
17. 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.
18. It should be noted that some exemptions would be applied to such a Public Space Protection Order and so would not be applied against a person:
 - Who is partially sighted or blind and registered under, Section 29 of the National Assistance Act 1948;
 - Who is registered as sight impaired, severely sight impaired or as having sight and hearing impairments, registered under 18 of the Social Services and Well-Being (Wales) Act 2014;
 - Who has a disability which affects their mobility or any other disability, where the requirement of removing faeces would be unreasonable.
19. In addition to paragraph 16 (above) a Public Space Protection Order will not apply to working dogs, which are used for emergency search and rescue, law enforcement, HM armed forces or used for directing animals.

20. The Cabinet report explained that the introduction of dog controls to remove antisocial behaviour is 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

21. The current legislation for dog fouling (The Dog (Fouling of Land) Act 1996 and more recently the Clean Neighbourhoods and Environment Act 2005) is currently not supported by Magistrates Courts and will at some point be completely repealed due more current legislation, specifically the Anti-Social Behaviour, Crime and Policing Act 2014.
22. The Council has brought a small number of prosecutions to court in the last five years. The Council issue fines relating to dog fouling and there will come a time when the Council is challenged on the legislation used to underpin these; therefore, a Public Space Protection Order covering dog fouling is required to allow for the continued issuing of Fixed Penalty Notices and prosecutions.
23. Public Spaces Protection Orders have to be reviewed at least every three years to ensure that they are an effective way of addressing anti social behaviour issues. When reviewing Public Space Protection Orders it is important to assess if the listed anti social behaviour issues have not been displaced to other areas. The current byelaws are not reviewed or 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.
24. The Cabinet report explains that the introduction of a Public Space Protection Order in respect of dog controls would 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 the Council deems it important to implement a

Public Space Protection Order to give uniformity and consistency to the control of dogs across specific identifiable areas of Cardiff.

25. 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 Public Space Protection Order will allow Cardiff Council to demonstrate continued commitment towards achieving a cleaner, more attractive and sustainable environment.

Cabinet Report Recommendations

26. The Cabinet report titled 'Public Spaces Protection Orders – Dog Controls' made the following recommendations:
- To undertake a six to twelve 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.

27. The recommendations made in the Cabinet report were accepted and recorded in the relevant section of the Cabinet decision register. A copy of this decision register is attached to this report as **Appendix 2**.

Consultation Exercise - Public Spaces Protection Orders (PSPOs) – Proposed Dog Controls

28. As stated above, the acceptance of the recommendations made in the Cabinet report triggered the start of a consultation exercise into ‘Public Spaces Protection Orders (PSPOs) – Proposed Dog Controls’.
29. The consultation exercise started on the 10 September and ran until the 22 October 2018. It was completed by 6,002 people. The Cabinet report identified a list of consultees who were invited to contribute to the exercise, these were:
- All Community & Town Councils in Cardiff Council;
 - Chief Constable of South Wales Police;
 - Police & Crime Commissioner for South Wales Police;
 - All neighbouring Local Authorities;
 - Operational Managers of all Council departments within Cardiff Council;
 - Community Centres;
 - Natural Resources Wales;
 - All Schools in Cardiff owned and/or maintained by Cardiff Council;
 - The Assembly Members and Members of Parliament for Cardiff;
 - Unison, Unite & GMB;
 - All Councillors;
 - Public Access Forums;
 - Friends of Parks Groups;
 - Ramblers & Walking Groups;
 - Animal Welfare Groups;
 - The Kennel Club;
 - Boarding Kennels;
 - Sports Clubs;
 - Youth Forum;

- Older Persons Advisory Group;
- Members of the public.

30. A key part of the consultation exercise was a survey titled 'Public Spaces Protection Orders (PSPOs) – Proposed Dog Controls' – a copy of this document is attached to this report as **Appendix 3**. All of the consultees named above were invited to complete this survey and / or to make submissions through a range of methods including letters, the Council website, email and telephone. All aspects of the consultation exercise were made available in English and Welsh.
31. As background information to this paper, a summary of the ROSPA advice covering 'Dogs on Play Areas' has been attached to this report as **Appendix 4**.

Way Forward

32. Councillor Peter Bradbury, Cabinet Member for Culture & Leisure and Councillor Michael Michael, Cabinet Member for Clean Streets, Recycling & Environment have been invited to attend for this item. They will be supported by officers from the Planning, Transport & Environment Directorate.
33. The meeting will also receive written and oral submissions from councillors, members of the public and other stakeholders.

Legal Implications

34. 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

35. 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) Consider the information in this report and the information presented at the meeting;
- ii) Determine whether they would like to make any comments, observations or recommendations to the Cabinet on this matter in time for its meeting on 15 November 2018; and
- iii) Decide the way forward for any future scrutiny of the issues discussed.

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13 November 2018