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**PRE DECISION SCRUTINY: PUBLIC SPACE PROTECTION ORDERS – DOG CONTROLS**

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**Reason for the Report**

1. To provide the Committee with an opportunity to carry out pre decision scrutiny on:
  - The introduction of a Public Space Protection Order for Dog Controls under Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014.
  - The policy document for Public Space Protection Orders.

**Background**

2. 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.
3. 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.
4. 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.
5. 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 should be designed to ensure that the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.

6. 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.
7. 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.
8. 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.
9. 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.
10. 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.
11. 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.

12. 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.
13. 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.
14. The introduction of a Public Space Protection Order would mean that 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.
15. 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.
16. Cardiff Council has carried out targeted educational interventions across the city where there are high number of complaints in relation to dog fouling. However, there continues to be issues across Cardiff with irresponsible dog ownership, specifically where dog faeces is not being removed and where dogs are not sufficiently controlled. The Council is aware that the majority of dog owners are responsible and

control their dogs in public spaces. However, there is still a minority of people who do not take responsibility for their dogs and ignore the Council's byelaws.

17. The Cabinet Decision of 12<sup>th</sup> July 2018 resolved that:
  - Officers be authorised 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.
  
18. This prompted a consultation exercise on dog control that specifically looked 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;
  - The revocation of the current byelaws associated with dog control in Cardiff be endorsed.
  
19. The Council carried out a consultation for six weeks from the 10th September to the 22nd October 2018. The consultation was promoted on the Council's website, social media and via posters that were displayed in each community hub and library across Cardiff. Feedback to the consultation exercise was made through a series of formats including by email, post, or via the Council's websites and social media channels.
  
20. In total 6,002 responses were made during the consultation exercise. The results of the exercise are contained within the consultation document which is attached to this report as **Appendix 1**. The consultation promoted comprehensive debate relating to the banning of dogs from sports pitches. The recommended dog controls proposed following consultation are:

- The prohibition of dog fouling in all public spaces owned and/or maintained by the Council;
- The requirement for a dog owner to have a means of clearing dog fouling;
- The exclusion of dogs in all enclosed playgrounds and schools, which are owned and / or maintained by Cardiff Council;
- The requirement that dogs are kept on a lead 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;
- The fixed penalty notice charge for a breach of a Public Spaces Protection Order for dog controls, as set out above, is set at £100;
- The dog controls will be exempt for persons who have a disability that affects the person's mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects, in respect of a dog trained by a registered charity and upon which the person relies for assistance.

## Issues

21. Cabinet could consider a 'do nothing' approach. However, the current byelaws contained under Dog Fouling of Land Act 1996 are not supported via Magistrates Courts and will eventually be repealed. This is 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.
22. A Public Space Protection Order policy is required by the Council to provide the process and guidance of how PSPO's will be managed in Cardiff. The draft Public Space Protection Order policy due to be received by Cabinet is attached to this report as **Appendix 2**.
23. In compliance with the duties as expressed within the Equality Act 2010, an Equalities Impact Assessment has been undertaken to determine how the PSPO may target or impact on groups with protected characteristics – a copy of the Equalities Impact Assessment is attached to this report as **Appendix 3**. Exemptions identified in the Equality Impact Assessment include that the proposed PSPO will not apply to a person:

- Who are visually impaired 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;
- Who has a disability that affects the person's mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects, in respect of a dog trained by a registered charity and upon which the person relies for assistance;
- Working Dogs used for emergency search and rescue, law enforcement, HM armed forces and used for directing animals will be exempt.

24. Engagement will take place with vulnerable user groups to explain the new legislation and associated exemptions. This will take place via correspondence and via Cardiff Access Focus Group.
25. Environmental Enforcement officers and Park Rangers will undertake Disability Equality Training to support them in their role of enforcement.
26. 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.
27. 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 6 weeks beginning with the date on which the Order or variation is made.
28. Future Orders and publication will be translated bilingually and signs will be created in compliance with the Welsh Language Act 1993.

### **Resources**

29. Resource will be required for the preparation of the legal order (including associated publication), media campaign and for the implementation of signage relating to any

agreed dog controls. This will be provided from the environmental improvement reserve.

30. Resource within the Environmental Enforcement team and Park Rangers team will be delegated authority to issue fines relating to the Public Space Protection Order for dog controls. The Council will work in partnership with the police to discuss training for Police Community Support Officers to support enforcement of new controls.

### **Previous Scrutiny & Local Member Consultation**

31. All Members were sent a copy of the consultation survey for Public Space Protection Orders – Dog Control and invited to participate in the consultation exercise in September 2018.

32. The Economy & Culture Scrutiny Committee and Environmental Scrutiny Committee ran a joint scrutiny meeting on the 19<sup>th</sup> November 2019 to consider a paper titled ‘Public Space Protection Orders – Control of Dogs’. The scope of the report and joint meeting was 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 22<sup>nd</sup> October 2018. The scrutiny focused on:

- The delivery of the public consultation exercise;
- The results and findings of the public consultation exercise;
- Feedback from key stakeholders and the public on the public consultation exercise, its range of proposals and future proposals;
- 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, provided feedback on dog control to the Cabinet to help inform future decision making.

33. Cabinet Members, officers and a range of external witnesses were invited to take part in the meeting. Participants at the meeting included:

- Councillor Peter Bradbury - Cabinet Member for Culture & Leisure;

- Councillor Michael Michael – Cabinet Member for Clean Streets, Recycling & Environment;
- Matt Wakelam - Assistant Director - Street Scene – Planning, Transport & Environment Directorate;
- Jon Maidment - Operational Manager – Parks, Sport & Harbour Authority – Economic Development Directorate;
- Jeremy Sparkes - Cardiff Dog Action;
- Penny Bowers - Cardiff Dog Action;
- Paul Smith - RSPCA Cymru;
- Peter Jones – Guide Dogs Cymru;
- Nathan Foy - Guide Dogs Cymru;
- Councillor Dilwar Ali - On behalf of Caring4K9's (All Party Working Group);
- Councillor Sean Driscoll - Councillor for Llandaff.

34. A copy of the cover report for the item titled 'Public Space Protection Orders – Control of Dogs' and the letter sent the Cabinet following the meeting are attached to this report as **Appendices 4 & 5**.

### **Report Recommendations**

35. The recommendations made in the report titled 'Public Space Protection Orders – Dog Controls' are for the Cabinet to approve the introduction of a Public Space Protection Order for Dog Controls under Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 to include:
- The prohibition of dog fouling in all public spaces owned and/or maintained by the Council;
  - The requirement for a dog owner to have a means of clearing dog fouling;
  - The exclusion of dogs in all enclosed playgrounds and schools, which are owned and / or maintained by Cardiff Council;
  - The requirement that dogs are kept on a lead 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;

- The fixed penalty notice charge for a breach of a Public Spaces Protection Order for dog controls, as set out above, is set at £100;
- The dog controls will be exempt for persons who have a disability that affects the person's mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects, in respect of a dog trained by a registered charity and upon which the person relies for assistance;
- To approve the new policy for Public Space Protection Orders.

### **Way Forward**

36. 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.

### **Legal Implications**

37. 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**

38. 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; and,
- (iii) Decide the way forward for any future scrutiny of the issues discussed.

**DAVINA FIORE**

**Director of Governance & Legal Services**

**13 March 2019**