

PUBLIC SPACE PROTECTION ORDERS – DOG CONTROLS

CULTURE AND LEISURE (COUNCILLOR PETER BRADBURY)

AGENDA ITEM:3

Reason for this Report

1. To consider the introduction of a Public Space Protection Order for Dog Controls under Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014.
2. To approve the policy document for Public Space Protection Orders.

Background

3. Cardiff Council have 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.
4. The Public Spaces Protection Order (PSPO) is available to local authorities to tackle persistent anti-social behaviour (ASB). PSPOs are available to local authorities to deal with specific nuisance problems in particular areas that are, or are likely to have a detrimental effect on the quality of life of people in the area.
5. The PSPO is a short-term tool and should be reviewed within three years to assess the effectiveness and necessity of the Order. A breach of the PSPO is a criminal offence. Enforcement officers with delegated authority can issue a Fixed Penalty Notice of £100, and a level 3 fine can be issued upon prosecution.
6. The Cabinet Decision of 12th July 2018 resolved that:
 1. *Officers be authorised 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.

2. *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.*

3. *the revocation of the current byelaws associated with dog control in Cardiff be endorsed*

7. The Council carried out a consultation for 6 weeks from the 10th September to the 22nd October 2018. This consultation was advertised on the Council's website, social media and via posters that were displayed in each community hub and library across Cardiff. The reporting methods to respond to the consultation were via email, post, survey, publication through Council websites and social media.

8. In total, there were 6,002 responses to the consultation the results of which can be found in Appendix A.

9. The consultation promoted comprehensive debate relating to the banning of dogs from sports pitches.

10. 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

11. 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.
12. A PSPO policy is required by the Council to provide the process and guidance of how PSPO's will be managed in Cardiff. The PSPO policy can be found in Appendix B.
13. 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 (Appendix C). Exemptions include:

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.
14. 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.
 15. Environmental Enforcement officers and Park Rangers will undertake Disability Equality Training to support them in their role of enforcement.
 16. 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.
 17. 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.

18. Future Orders and publication will be translated bilingually and signs will be created in compliance with the Welsh Language Act 1993.

Resources

19. 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.
20. 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.
21. The Council will work in partnership with the police to discuss training for Police Community Support Officers to support enforcement of new controls.

Local Member consultation

22. All Local Members were sent the consultation survey for PSPO dog controls at the start of the consultation.
23. Environmental Scrutiny Committee undertook a review following the consultation and Local Members were invited to attend if they wanted to discuss the outcomes of the consultation or present their views.
24. Environmental Scrutiny Committee supported by the Cabinet Member for Culture and Leisure will undertake a pre-decision scrutiny of the recommendations for dog controls prior to Cabinet.

Reason for Recommendations

25. The Council is seeking to establish a balanced set of controls that permit dog owners to enjoy the amenity offered by our many open spaces along with those whose enjoyment of the same spaces could be detrimentally affected by the actions of irresponsible dog owners.
26. A Public Spaces Protection Order will allow Enforcement Officers to serve Fixed Penalty Notices for specified antisocial behaviour relating to dog control.
27. The PSPO for dog controls will address the changes in legislation relating to the Dog Fouling of Land Act 1996.
28. Byelaws across Cardiff are varied due to the time of implementation and changes in legislation. Therefore, the PSPO for dog controls will ensure a robust and consistent approach to enforcement on the public land, including pavements, parks, schools, cemeteries and any other Council owned or maintained land.

29. The PSPO for dog controls will support a move from reactive to proactive management of dog fouling in terms of requiring dog walkers to demonstrate they have a means to clear dog fouling; such as a bag or scooper.

Financial Implications

30. The introduction of a Public Space Protection Order for Dog Controls will be funded from within existing resources.

Legal Implications

31. The recommendation to adopt the Dog Control Public Space Protection Order in Cardiff will allow for breaches of the order to be enforced (subject to the enforcement policy) by way of a Fixed Penalty Notice of £100. If this notice of fine is not paid within the required time then a criminal prosecution may be commenced against the defendant.
The introduction of the Dog Control Public Space Protection Order will lead to an increased number of criminal prosecutions in the Magistrates' Court with a need for an increase in resources to cover the expected increased work.
32. 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. 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;
 - (h) and be reasonable and proper in all the circumstances.
33. The Well-Being of Future Generations (Wales) Act 2015 ('the Act') places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible. The Council have taken into account the impact of the report recommendations on people living their lives in Wales in the future, having regard to:
- Looking to the long term
 - Focusing on prevention by understanding the root causes of problems
 - Delivering an integrated approach to achieving the 7 national well-being goals
 - Working in collaboration with others to find shared sustainable solutions
 - Involving people from all sections of the community in the decisions which affect them

34. The Council is satisfied that the proposed recommendations accord with the above principles

HR Implications

35. There are no HR implications to this report as the roles already have LEQ enforcement such as littering and dog fouling as a requirement and the recommendations in this report will provide support for its enforcement role.
36. The details within this report have been consulted on with the trade unions and staff who work within enforcement.

RECOMMENDATIONS

Cabinet is recommended to:

1. 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
2. approve the new policy for Public Space Protection Orders.

SENIOR RESPONSIBLE OFFICER	ANDREW GREGORY Director of Planning, Transport & Environment
	15 March 2019

The following appendices are attached:

Appendix A – PSPO: Dog Control Consultation Response Report

Appendix B – PSPO Policy Statement.

Appendix C – EqIA for the Public Space Protection Orders – Dog Controls

The following background papers have been taken into account

Local Government Association: Public Spaces Protection Orders - Guidance for Councils

Home Office: Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers: Statutory guidance for front line professionals, July 2014

Social Services and Well-Being (Wales) Act 2014

Equalities Act 2010

Human Rights Act 1998

Dog Fouling of Land Act 1996

Welsh Language Act 1993

National Assistance Act 1948