

CABINET MEETING: 11 JULY 2019

**PUBLIC SPACE PROTECTION ORDER – DOG CONTROLS
DRAFT ORDER**

CULTURE AND LEISURE (COUNCILLOR PETER BRADBURY)

AGENDA ITEM: 5

Reason for this Report

1. To consider the responses to the consultation on the draft Public Space Protection Order for the introduction of Dog Controls.
2. To approve the draft Cardiff Public Spaces Protection (Dog Control) Order 2019 made under Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 (Appendix A to the report).

Background

3. The Council carried out a consultation on dog controls 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.
4. In total, there were 6,002 responses to the public consultation on dog controls.
5. The consultation promoted comprehensive debate relating to the banning of dogs from sports pitches and this aspect was not included in the draft proposals for the introduction of a Public Space Protection Order for Dog Controls.
6. Environmental Scrutiny Committee undertook a pre decision scrutiny on Public Space Protection Orders – Dog Controls. The comments and observations from the scrutiny meeting are shown in Appendix B and the response to the comment and observations in Appendix C.
7. The Cabinet Decision of 21st March 2019 resolved that:

- i) the introduction of a Public Space Protection Order for Dog Controls under Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 be approved 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
- ii) the new policy for Public Space Protection Orders be approved

Issues

8. A draft Public Spaces Protection Order ('PSPO') has been prepared to introduce the dog controls approved by Cabinet in March 2019.
9. In accordance with the statutory procedural requirements, the text of the draft Order has been published on the Council's website; and a copy of the draft Order has been sent to:
- the Chief Officer of Police and the South Wales Police Authority; and appropriate community representatives on 19th June 2019 (Appendix D);
 - All Local Members;
 - All Community Councils on 19th June 2019; and
 - All owners / occupiers of land affected, including Governing Bodies of Schools.
10. This has allowed all interested parties a final opportunity to comment on the wording of the proposed order before it is made.
11. The responses to the consultation on the text of the draft Order, with notes on the points raised, are shown in Appendix E. Members will note that responses are broadly supportive of the draft Order. No changes to the draft Order are proposed.

12. The PSPO will supersede any Bye Laws relating to dog control and there is no requirement for the revocation of any Bye Laws.
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 impact on groups with protected characteristics (Appendix F).
14. The proposed PSPO includes exemptions, meaning that the restrictions will not apply to a person who:
 - is registered as blind, sight or hearing impaired under the National Assistance Act 1948, the Social Services and Well-Being (Wales) Act 2014 or any other legislation;
 - has a disability which affects his mobility, manual dexterity, physical coordination, or ability to lift, carry or otherwise move everyday objects, in respect of a dog trained by a registered charity and upon which he relies for assistance; or
 - is using a working dog for purposes of law enforcement, military duties or statutory emergency services (search and rescue).
15. Environmental Enforcement officers and Park Rangers will undertake training, including 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. All Orders and associated publications will be translated bilingually and signs will be created in compliance with the Welsh Language Act 1993.
19. The implementation of the PSPO for dog control will include the following:
 - A media campaign to engage with residents across Cardiff, including working with Dog Groups to send key messages and information.
 - Implementation of signage where required to provide information and support education and enforcement.
 - Ongoing review of the PSPO and any associated enforcement to ensure the dog controls are being appropriately managed.

Resources

20. Resource will be required for the publication of the legal order, media campaign and for the implementation of signage relating to the agreed dog

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

21. 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.
22. The Council will work in partnership with the police to discuss training for Police Community Support Officers to support enforcement of new controls.
23. The Council will work in partnership with Community Councils to discuss training for Community Council employees, where Community Councils have indicated they wish to support enforcement of the new controls.
24. Resource will be required to support processing any cases requiring to go to Magistrates Court.

Local Member consultation

25. All Local Members were sent the consultation survey for PSPO dog controls.
26. 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.
27. Environmental Scrutiny Committee supported by the Cabinet Member for Culture and Leisure undertook a pre-decision scrutiny of the recommendations for dog controls prior to Cabinet.
28. All Local Members were sent the draft Order for the introduction of a Public Space Protection Order for Dog Controls

Reason for Recommendations

29. 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.
30. A Public Spaces Protection Order will allow Enforcement Officers to serve Fixed Penalty Notices for specified antisocial behaviour relating to dog control.
31. 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.

32. 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

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

Legal Implications

34. The Council has statutory power (under section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014, 'the 2014 Act') to make a Public Space Protection Order (PSPO) if it is satisfied that:
- (i) activities carried on in a particular area have had a detrimental effect on the quality of life of those in the locality, or are likely to do so; and
 - (ii) the effect of the activities is, or is likely to be, persistent or continuing and unreasonable, and justifies the restrictions being imposed.
35. The Council should only impose restrictions in a PSPO if it has evidence to show that the restrictions are reasonable, proportionate and justified having regard to the statutory conditions set out in the paragraph above.
36. In deciding whether to make a PSPO and if so, what it should include, the Council must have particular regard to the rights of freedom of expression and freedom of assembly set out in Articles 10 and 11 of the European Convention on Human Rights. Members will note from the body of the report that no relevant Article 10 or 11 issues have been identified in relation to the proposed dog controls. Members may also wish to note that, in any event, the Article 10 and 11 Convention rights are subject to any restrictions necessary for the protection of the rights and freedoms of others.
37. The Council must also have regard to the statutory guidance on Public Spaces Protection Orders issued by the Home Office, 'Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers: Statutory guidance for front line professionals', July 2014.
38. A PSPO may last for up to 3 years, and may be renewed, with or without variations, subject to compliance with the statutory procedures set out under the 2014 Act.
39. Breach of a PSPO, without reasonable excuse, is a criminal offence, subject to a fixed penalty (of up to £100) or prosecution. A fixed penalty notice may be issued to anyone reasonably believed to be in breach of the Order by a police constable (or anyone authorised to exercise the powers of a constable, such as police community support officers) or a Council authorised officer. A fixed penalty notice offers the person to whom it is

issued the opportunity of discharging any liability to conviction by payment of a fixed penalty to the Council within a specified time. If the fixed penalty is not paid, prosecution proceedings may be started, not earlier than 14 days from the date of the fixed penalty notice.

40. Before making a PSPO, the Council is required (under s.72 of the 2014 Act) to:
 - (i) Consult with the Chief Officer of Police and the South Wales Police Authority; appropriate community representatives; and owners / occupiers of all land affected;
 - (ii) Publish the text of the draft Order; and
 - (iii) Notify all community councils within the area of the proposed restrictions.
41. The control of school premises is generally the responsibility of the school governing body, but the Council may issue directions in this regard, pursuant to the Control of School Premises (Wales) Regulations 2008. Members will note that the governing bodies of the schools affected by the proposed restrictions have been consulted, as occupiers of the land, and given the opportunity to comment on the draft Order.
42. Any comments received on the draft PSPO must be duly considered before the Order is made.
43. After a PSPO is made, the Council is required (under SI 2014/2591) to publish the Order on its website and erect notices on or adjacent to the land in question (where the dog controls apply) which are sufficient to draw public attention to the restrictions imposed by the Order.
44. The validity of the Order may be challenged within 6 weeks after it is made, by application to the High Court. The Court may quash the Order or any of the prohibitions or requirements imposed by the order if it is satisfied that (a) the Council did not have power to make the order, or to include particular prohibitions or requirements imposed by the order, or (b) the interests of the applicant have been substantially prejudiced by a failure to comply with the statutory requirements.
45. Any byelaws relating to activities regulated by a PSPO are of no effect during the currency of the Order (by virtue of section 70 of the 2014 Act). This means there is no necessity to revoke any existing bye-laws imposing controls on dogs, since they are of no effect while the PSPO is in force.
46. In considering the proposals, the Council must have regard to its public sector equality duties under the Equality Act 2010 (including specific Welsh public sector duties). Pursuant to these legal duties, Councils must in making decisions have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. The Protected characteristics are: age, gender reassignment, sex, race – including ethnic or national origin, colour or nationality, disability, pregnancy and maternity, marriage and civil partnership, sexual orientation, religion or belief –

including lack of belief. Members will note that an Equalities Impact Assessment has been carried out to identify the equalities implications of the proposals, and due regard should be given to the outcomes of the same.

47. The Well-being of Future Generations (Wales) Act 2015 requires the Council to also consider how the proposals will contribute towards meeting its well being objectives (set out in the Corporate Plan). Members must be satisfied that the proposals comply with the sustainable development principle, which requires that the needs of the present are met without compromising the ability of future generations to meet their own needs.
48. It should be noted that the introduction of a Public Space Protection Order is likely to lead to an increased number of criminal prosecutions in the Magistrates' Court, with a consequential increase in the legal resources required to manage this additional work.
49. The making of a PSPO is an executive function by virtue of section 13 of the Local Government Act 2000 and the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007. This means that Cabinet has the power to approve the draft Order, having regard to the above.

HR Implications

50. 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 this enforcement role.
51. The details within this report have been consulted on with the trade unions and staff who work within enforcement.

RECOMMENDATIONS

Cabinet is recommended to:

- (i) note the responses to the consultation on the text of the draft Public Spaces Protection (Dog Controls) Order 2019 attached as Appendix E;
- (ii) Approve the Public Space Protection (Dog Controls) Order 2019 attached as Appendix A, subject to any agreed amendments;
- (iii) Submit an information report on this matter to Full Council on 18th July 2019; and
- (iv) Note the implementation arrangements as set out in the report.

SENIOR RESPONSIBLE OFFICER	ANDREW GREGORY Director of Planning, Transport & Environment
	5 July 2019

The following appendices are attached:

- Appendix A – The Order for the introduction of a Public Space Protection Order for Dog Controls (English / Welsh)
- Appendix B – Letter from Environmental Scrutiny Committee on pre decision scrutiny on Public Space Protection Orders – Dog Controls
- Appendix C – Response to Environmental Scrutiny Committee on pre decision scrutiny on Public Space Protection Orders – Dog Controls
- Appendix D – Community Representatives
- Appendix E – Responses to the consultation on the draft Order
- Appendix F – EqlA 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