

Title of report :
Public Space Protection Order Dog Control
Key Decision No. NH R32

CABINET MEETING DATE (2020/21) 17th March 2021	CLASSIFICATION: Open If exempt, the reason will be listed in the main body of this report.
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WARD(S) AFFECTED: All Wards

CABINET MEMBER
Cllr Susan Fajana -Thomas
Community Safety

KEY DECISION Yes
REASON:Affects more than two Wards

GROUP DIRECTOR
Ajman Ali, Neighbourhoods and Housing

1. CABINET MEMBER’S INTRODUCTION

- 1.1 Public Space Protection Orders (PSPOs) are intended to deal with nuisance or problems in a particular area that is detrimental to the local community’s quality of life, by imposing conditions on the use of the area, which apply to everyone.

- 1.2 Approving the PSPO ensures that Community Safety and Enforcement Officers have powers under this legislation to deal with anti-social behaviour caused by dog fouling and dogs behaviour when in a public place.
- 1.3 As the Cabinet Member for Community Safety, I am supportive of the proposals contained in this report to prevent dog related nuisance including dog fouling, dogs not being adequately controlled, dogs entering children's play areas, sports areas and marked pitches.

2. GROUP DIRECTOR'S INTRODUCTION

- 2.1 PSPOs have been in place since 2017 in relation to dog control and expired on 19th October 2020. These commenced when the legislation relating to dog control was replaced. The PSPOs mirror the controls that were in place at that time.
- 2.2 The Council believes that introducing a Public Space Protection Order (PSPO), will help with the issues in which dog owners look after their dogs, as well as the problems which are associated with dogs in public spaces. It will also enable Community Safety and Enforcement Officers to issue on-the-spot fines to those not complying with the requirements of the PSPO.
- 2.3 The Council undertook consultation to gauge support on continuing to have a PSPO in place; if there were other locations which need to be covered by the PSPO, if the current PSPO had a negative impact on people, the effectiveness of the PSPO and if it is important to control the way people look after their dogs in shared public spaces. This lasted for six weeks from 15th September 2020 to 30th October 2020.

3. RECOMMENDATION

- 3.1 That Cabinet approves the making of a Public Spaces Protection Order in relation to dog control under Section 59 of the Anti-Social Behaviour Crime and Policing Act 2014 and the prohibitions and requirements in the proposed Order in this report for a period of three years.

4. REASONS FOR DECISION

- 4.1 A PSPO is a tool, implemented under the Anti-Social Behaviour, Crime and Policing Act 2014 to ensure the law abiding majority can use and enjoy public spaces safe from anti-social behaviour. The proposed PSPO will be introduced to ensure that Hackney has an effective response to issues relating to dog control (including dog fouling), excluding dogs from children's play areas and sports areas, keeping a dog on a lead in specified areas and ensuring that dogs are under control.
- 4.2 PSPOs are intended to be used to deal with a particular nuisance or problem in an area that is detrimental to the local community's quality of life by putting

in place conditions on the use of that area that apply to everyone. They are designed to ensure people can use and enjoy public spaces safe from anti-social behaviour.

4.3 Councils can make a PSPO after consultation with the Police and other relevant bodies and communities. The legislation sets out a two pronged test in which a Local Authority has to be satisfied on reasonable grounds before a PSPO can be made. These conditions are as follows:

1. That the activities carried out in a public place have had a detrimental effect on the quality of life of those in the locality; or that it is likely that they will have such an effect.

2. That the effect or the likely effect of the activities:

- Is (or is likely to be) persistent or continuous.*
- Is (or is likely to be) unreasonable.*
- Justifies the restriction imposed by the notice.*

4.4 A PSPO must identify the public place in question and can:

- (a) prohibit specified things being done in that public place
- (b) require specified things to be done by persons carrying on specified activities in that place; or
- (c) do both of those things.

4.5 The only prohibitions or requirements that may be imposed are ones that are reasonable to impose in order to prevent or reduce the risk of the detrimental effect continuing, occurring or recurring.

4.6 Prohibitions may apply to all persons, or only to persons in specified categories, or to all persons except those in specified categories.

4.7 The PSPO may specify the times at which it applies and the circumstances in which it applies or does not apply.

4.8 Unless extended the PSPO may not have effect for more than 3 years.

4.9 Breach of a PSPO without reasonable excuse is a criminal offence. The Police or a person authorised by the Council can issue fixed penalty notices, the amount of which may not be more than £100. A person can also be prosecuted for breach of a PSPO and on conviction the Magistrates' Court can impose a fine not exceeding level 3 on the standard scale (currently £1000).

4.10 In deciding to make a PSPO the Council must have particular regard to Article 10 (Right of Freedom of Expression) and Article 11 (Right of Freedom of Assembly) of the European Convention on Human Rights ('ECHR').

- 4.11 The Council must also carry out the necessary prior consultation, notification and publicity as prescribed by s.72 of the 2014 Act.
- 4.12 In preparing this report Officers have had regard to the statutory guidance issued by the Home Office and the Guidance on PSPOs issued by the Local Government Association.
- 4.13 This report proposes the use of a PSPO to deal with dog control.
- 4.14 The Council undertook the necessary consultation to gauge support on the introduction of a PSPO as required by s72(3) and (4) of the Anti-Social Behaviour, Crime and Policing Act 2014 which took place for six weeks from 15th September 2020 to 30th October 2020.
- 4.15 68 responses were received in response to the consultation, which is small considering the size of the population of Hackney as a whole, and the response rate to the consultation is very low. However we have taken this into consideration alongside our broader evidence base, including complaints raised with us by residents.
- 4.16 Of the 68 participants took part in the consultation
- 88% said they support the introduction of the PSPO
 - 9% said they oppose the introduction of the PSPO
 - 3% said they partially support the introduction of the PSPO.
- 4.17 A number of issues were raised as part of the consultation process, though the number of respondents raising these issues is low (four or less in all cases) with main issues being:
- Well behaved dogs should be exempt from the requirement to wear a lead in specified places.
 - Spaces under half a hectare should not have a dog lead restriction.
 - Offer dog fenced exercise areas.
 - Dogs allowed in parks
 - Fines enforced for not cleaning up after your dog
- 4.18 In response to the issues raised by respondents to the consultation the Council has taken account of these and the responses are detailed below:
- 4.19 Well behaved dogs**
- 4.18.1 It is not possible to distinguish between a well behaved dog which is why the requirement is in place.

4.20 Spaces under half a hectare

4.20.1 Whilst it is understood that owners of well behaved dogs are keen to allow their dogs to run freely in smaller parks, this desire must be balanced against those members of the public who have a fear of dogs. If dog owners let their dogs off the lead in Hackney's smaller parks, the dogs can dominate the space and cause fear and alarm amongst other park users. There are therefore no plans to change the rules for smaller parks at present,

4.21 Dog fenced exercise areas

4.21.1 Dedicated dog exercise areas require a significant amount of space within a park (or multiple parks). At present there is limited space in Hackney's parks, and no suitable location has been identified for such a dog exercise area.

4.21 Dogs allowed in parks

4.22.1 Dogs are allowed in all parks subject to certain restrictions where dogs are not allowed in children's play areas

4.23 Enforcement

4.23.1 Council Community Safety and Enforcement Officers have an existing record of responding to concerns about dog fouling and other dog nuisance issues. Appropriate enforcement action will be taken in accordance with the Enforcement Policy, largely this will be by education and encouragement, though formal action will be taken when required.

4.23.2 The Council currently has signage in place advising of the previous PSPO, and while some new signage will be required, this cost will be met from existing service budgets.

4.23.3 Enforcement Officers are tasked weekly at the internal weekly tasking meeting co-ordinated by the Intelligence Hub. The purpose of the weekly tasking is to:

- Coordinate deployment of staff using an evidence based approach to provide targeted action and patrols, including planning for seasonal peaks of activity that require action on a cyclical basis.
- Highlight emerging patterns and trends and plan targeted early intervention and activities.
- Provide a staff briefing.
- Enable a more joined up and efficient use of service provision in Hackney.
- Provide a transparent and auditable decision making process that will stand up to scrutiny and justify how and why decisions have been reached. Provide a full list of all action/tasking's completed and action taken to resolve issues.

- 4.23.4 There were a very small number of comments calling on the proposed PSPO to be tougher in terms of fines, however the level of the Fixed Penalty Notice is set by statute at £100 and the Council has no discretion regarding this. The only discretion the Council has is with the level of penalty paid for early repayment which has been set at £60.
- 4.23.5 The majority of respondents (88%) stated that they were not dog owners, but there was a fairly mixed view in terms of them witnessing a dog acting aggressively, or feeling threatened by a dog. 42% of respondents stated that they have witnessed this, but with the total number of respondents to the consultation being very low, this would not truly reflect the total population of Hackney.
- 4.23.6 However, the majority of respondents did support the proposal of renewing the Dog Control PSPO which includes the majority of those who are dog owners.
- 4.23.7 By reviewing the comments made, it is clear that most dog owners, who have control of their dogs and that are not aggressive or threatening towards other people and animals, feel that they are being penalised by not being able to let their dog off the lead to run around freely. Those who are not dog owners feel that dogs that are not on leads can sometimes be a nuisance. Suggestions for dog fenced areas of unused green spaces could be an option to allow dogs to have the space to exercise, and not disturb other park users.
- 4.23.8 Cleaning up after their dogs is an issue, and this should lead to stricter measures and fines for those dog owners who are responsible.

5. DETAILS OF ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 5.1 Not having a PSPO will have a detrimental impact on the Community Safety and Enforcement Officers to enforce dog-related nuisance across the borough. This may lead to increased dog fouling, dogs being a nuisance and not being adequately controlled, dogs entering children's play areas, sports areas and marked pitches.
- 5.2 Officers could enforce By-laws relating to Parks, Gardens and Open Spaces first made in 1932 that transferred to Hackney Council from The Greater London Council in 1971. The by-laws are outdated and hold a maximum penalty of £20 which is not a sufficient deterrent to those who would breach them.
- 5.3 This option would be contrary to the need for the PSPO and public support for the PSPO. It is also likely to result in the re-occurrence of the activities that

are detrimental to the quality of life of people who live, visit or work in Hackney.

6 BACKGROUND

6.1 Policy Context

6.1.1 PSPOs are made under Chapter 2 of the Anti-Social Behaviour, Crime and Policing Act 2014. Prior to the 2014 Act Local Authorities had the ability to make Dog Control Orders (DCOs) under the Part 6 of the The Clean Neighbourhoods and Environment Act 2005 (“CNEA”). Regulations made under the CNEA provided template orders stipulating the terms of a DCO. The CNEA simply created a power to make DCOs, it did not set out a test to be met before this could be done.

6.1.2 The power to make new DCOs was repealed by the 2014 Act. By virtue of section 75(1) of the 2014 Act, existing DCOs remained in force for three years after the Act came into force. After three years they are treated as transitioned PSPOs for the purposes of enforcement by virtue of s.75(3). Once that further three years has expired (in October 2020), the orders come to an end because a PSPO may not have effect for a period of more than three years (s.60(1)).

6.1.2 Public Spaces Protection Orders are intended to deal with a particular nuisance or problem in a specific area that is detrimental to the local community’s quality of life, by imposing conditions on the use of that area which apply to everyone. They are intended to help ensure that the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.

6.1.3 Given that these orders can restrict what people can do and how they behave in public spaces, it is important that the restrictions imposed are focused on specific behaviours and are proportionate to the detrimental effect that the behaviour is causing or can cause, and are necessary to prevent it from continuing, occurring or recurring.

6.2 Equality Impact Assessment

6.2.1 An Equality Impact Assessment (EIA) has been undertaken to assess the potential of an adverse positive or negative impact the proposed PSPO and related powers would have on protected groups. The EIA has recommended that no further detailed analysis is required. A copy of the EIA is attached as Appendix 4 of this report. In completing the EIA the Council has taken the requirements of the Public Sector Equality Duty into account which was created by the Equality Act 2010.

6.2.2 The equality duty was developed in order to harmonise the equality duties and to extend it across the protected characteristics. It consists of a general equality duty, supported by specific duties which are imposed by secondary legislation. In summary, those subject to the equality duty must, in the exercise of their functions, have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

6.2.3 The proposed PSPO sets out a range of powers available to the Council and how these will be legally applied. The PSPO reflects national legislation and the various powers would have been assessed for their impact on equality as part of the consultation and development process before the legislation was enacted. Its use will be determined by the behaviour occurring rather than any protected group.

6.2.4 The Council recognises that those who are registered blind, have a mobility issue, those with assistance dogs would struggle to comply with the requirements of the proposed PSPO and these groups have been and will continue to be exempt from prosecution if found to be in breach of the provisions of the PSPO.

6.3 Sustainability

6.3.1 The benefits of the proposed PSPO will be at least three years and longer if subsequently renewed upon expiry

6.4 Risk Assessment

6.4.1 A total of nine comments were received in relation to the proposed PSPO impacting negatively on them. The majority of comments (5) received in relation to this were of the view that dogs off leads not being controlled is an issue. The purpose of stakeholder engagement was to clarify that there is not a ban on dogs in public places, subject to certain restrictions, and to provide a better understanding of the balanced approach to managing freedoms for all with the need to control inappropriate behaviour that infringes the freedoms of the community more widely.

7. COMMENTS OF THE GROUP DIRECTOR OF FINANCE AND CORPORATE RESOURCES

7.1 The cost of enforcing the PSPO is met from the Community Safety and Enforcement approved budgets.

8. VAT Implications on Land & Property Transactions

Not applicable

9. COMMENTS OF THE DIRECTOR, LEGAL AND GOVERNANCE SERVICES

- 9.1 Under the Mayors Scheme of Delegation, the Mayor and Cabinet have the authority to exercise the Council's powers to issue PSPOs under the Anti Social Behavior Crime and Policing Act 2014. As this PSPO affects two or more wards it is also a key decision.
- 9.2 A PSPO may be considered to be an appropriate response where Local Authorities have identified a particular local issue. A single PSPO can be used to target a range of different ASB issues. These orders allow Local Authorities to introduce reasonable prohibitions and/or requirements regarding certain behaviours within the specified public area. They may also include prescribed exemptions. Orders can be introduced for a maximum of 3 years, and may be extended beyond this for a further three-year period(s) in circumstances where certain criteria are met.
- 9.3 In making the order, a Local Authority will need to demonstrate that statutory criteria has been met. This includes:
- the appropriate scope of the Order
 - the area covered by the restrictions
 - the potential impact of the proposals
 - how each of the restrictions meets the legal test set out in s.59 of the Anti- Social Behaviour Crime and Policing Act 2014.
- 9.4 The PSPO must set out:
- what the detrimental activities are,
 - what is being prohibited and/or required (including any exemptions),
 - the area covered,
 - the consequences for breach,
 - the period for which it has effect.
- 9.5 There are some limitations set out in legislation regarding behaviours that can be restricted by PSPOs. As a public sector body, the Council must have regard to the freedoms permitted under articles 10 and 11 of the Human Rights Act 1998 when drafting, which cover freedom of expression, freedom of assembly and association.

APPENDICES

Appendix 1– Consultation report on proposed PSPO
 Appendix 2- Proposed PSPO Dog Control
 Appendix 3– Plan of area covered by proposed PSPO
 Appendix 4- Equality Impact Assessment

EXEMPT

Not applicable

CONFIDENTIAL

No

BACKGROUND PAPERS

None

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