

<b>Title of Report</b>	Public Spaces Protection Order (Dog Control)		
<b>Key Decision No</b>	CHE S223		
<b>For Consideration By</b>	Cabinet		
<b>Meeting Date</b>	26 June 2023		
<b>Cabinet Member</b>	Cllr Fajana-Thomas (Cabinet Member for Community Safety and Regulatory Services)		
<b>Classification</b>	Open		
<b>Ward(s) Affected</b>	All		
<b>Key Decision &amp; Reason</b>	<table border="1"> <tr> <td>Yes</td> <td>Significant in terms of its effects on communities living or working in an area comprising two or more wards</td> </tr> </table>	Yes	Significant in terms of its effects on communities living or working in an area comprising two or more wards
Yes	Significant in terms of its effects on communities living or working in an area comprising two or more wards		
<b>Implementation Date if Not Called In</b>			
<b>Group Director</b>	Rickardo Hyatt (Group Director for Climate, Homes and Economy)		

## **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 are detrimental to the local community's quality of life, by imposing conditions on the use of the area, which apply to everyone.
- 1.2. PSPOs ensure that Community Safety and Enforcement Officers and Police Officers have the necessary powers to deal with anti-social behaviour (ASB) in a public place.
- 1.3. The Council is therefore proposing to renew the current PSPO, with additional restrictions aimed at ensuring Hackney's public spaces can continue to be enjoyed and protected free from anti-social behaviour and damage.
- 1.4. As the Cabinet Member for Community Safety, I am supportive of the proposals contained in this report for Officers to undertake a formal consultation in relation to renewing the current PSPO, together with the proposed additional restrictions.

## **2. Group Director's Introduction**

- 2.1. PSPOs have been in place since 2017 in relation to Dog Control, with the exception of the period 20 October 2020 to 18 March 2021. The PSPOs 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 current PSPO is due to expire on 17 March 2024, and the Council is now considering extending the PSPO for a further three years and, if so, whether to make any amendments to it.
- 2.3. Over the past eighteen months, Hackney Council has received a large amount of correspondence relating to the behaviour of dogs in the borough. Many residents are nervous about the large numbers of dogs in Hackney's parks and green spaces. Some are requesting more dog free areas, some request more dogs on leads orders, and many dog owners are calling for fenced off areas to exercise their dogs in.
- 2.4. In addition, there are increasing numbers of professional dog walkers using Hackney's parks and green spaces, particularly in Hackney Marshes and the borough's other larger parks. It is very difficult for professional dog walkers to be in control of high numbers of dogs at any one time.
- 2.5. The aim of the public consultation is to invite views from all Hackney residents and interested groups about a variety of dog control related issues and potential amendments to the current PSPO. It is also for the and to gain

a better understanding of residents' experience of dog control in parks and public spaces.

- 2.6. It is proposed to undertake the consultation over an extended period when parks and public spaces experience the highest amount of footfall.

### **3. Recommendations**

- 3.1. **That Cabinet approves that a consultation exercise in relation to the renewing and varying the existing Public Spaces Protection Order which would place controls on dog fouling, dog exclusion, dogs on leads, dogs on leads where requested and on the maximum number of dogs that can be walked by one person is undertaken. A copy of the proposed Order is attached to this report as Appendix 1.**

### **4. Reason(s) for Decision**

- 4.1. A PSPO is a tool to ensure the law-abiding majority can use and enjoy public spaces safe from activities which have a detrimental effect on the quality of their life in that area. The proposed PSPO should ensure that Hackney has an effective response to ASB in the areas covered by the PSPO.

- 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 activities which have the requisite detrimental impact.

- 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 of 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 £1,000).
- 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 Anti Social Behaviour Crime and Policing Act 2014 (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.

## **5. Details of Alternative Options Considered and Rejected**

- 5.1. Not having a PSPO in place regarding dog control 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 can enforce By-laws relating to Parks, Gardens and Open Spaces, which were first made in 1932, 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 the borough.

- 5.4. An options analysis will be undertaken before any decision to renew the PSPO is taken, including for any additional controls included in the draft order . Cabinet will need to decide whether or not to renew the PSPO together with any proposed additional controls once the outcomes of the consultation are known and have been analysed.

## **6. Background**

### Policy Context

- 6.1. PSPOs are made under Chapter 2 of the Anti-Social Behaviour, Crime and Policing Act 2014.
- 6.2. After three years they are treated as transitioned PSPOs for the purposes of enforcement by virtue of s.75(3) of the 2014 Act. Once that a further three years expired (in October 2020), the orders came to an end because a PSPO may not have effect for a period of more than three years (s.60(1)). Insert text here.
- 6.3. 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 ASB.
- 6.4. 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.

### Equality Impact Assessment

- 6.5. An Equality Impact Assessment (EIA) has been undertaken to assess the potential of an adverse positive or negative impact of the proposed PSPO on protected groups. A copy of the EIA is attached as Appendix 2 of this report.
- 6.6. In completing the EIA the Council has complied with the requirements of the Public Sector Equality Duty , which was created by the Equality Act 2010.
- 6.7. 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.

6.8. 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.

6.9. The Council is mindful that when making a Public Space Protection Order, regard needs to be given to the rights of freedom of expression and freedom of assembly safeguarded by Articles 10 and 11 of the European Convention on Human Rights: s.72(1). These rights are very likely to be engaged by any order which restricts liberty and gatherings of groups of people. The Council will carefully consider the need to pursue a legitimate aim to protect all residents from anti-social behaviour in public spaces as a proportionate means of tackling anti-social behaviour.

#### Sustainability and Climate Change

6.10. A PSPO will expire after a period of three years unless it is varied or extended.

#### Consultations

6.11. This report is requesting approval to undertake appropriate consultation in accordance with statutory guidelines and detailed under section 72 of the Act. This will include Metropolitan Police, appropriate community groups, owners and occupiers of land.

6.12. The consultation summary explaining the purpose of the consultation and online questionnaire will be included on the Council's online consultation platform, Citizen Space: <https://consultation.hackney.gov.uk/>

- Consultees will be able to request paper copies of the consultation pack (summary and questionnaire) by calling the switchboard and a member of the Enforcement Team will post a copy of the consultation pack to them.
- The consultation pack will also be made available at public access points across the borough that will be open to the public when the consultation is launched.
- The consultation will also be promoted via the Council's publications

(Love Hackney) and various social media channels.

- 6.13. A further report will be submitted to Cabinet for a final decision on whether or not to approve the proposed PSPO.

#### Risk Assessment

- 6.14. Some users of the public spaces to be covered by the proposed PSPO may be unhappy with the proposals. However, the consultation exercise will 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.
- 6.15. The purpose of the proposed PSPO, and subject to certain restrictions, is 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 undertaking the consultation of the proposed PSPO is met from the Community Safety and Enforcement approved budgets.

### **8. VAT Implications on Land and Property Transactions**

- 8.1. There are no VAT implications in relation to this report.

### **9. Comments of the Director of Legal, Democratic and Electoral Services**

- 9.1. The recommendation set out in paragraph 3 of this report is for the Cabinet to approve the undertaking of a consultation for the making of a Public Spaces Protection Order.

- 9.2. S.72 of the Anti-Social Behaviour Crime and Policing Act 2014 states that:

(3) A local authority must carry out the necessary consultation and the necessary publicity, and the necessary notification (if any), before—

- (a) making a public spaces protection order,
- (b) extending the period for which a public spaces protection order has effect, or
- (c) varying or discharging a public spaces protection order.

(4) In subsection (3)—

“the necessary consultation” means consulting with—

- (a) the chief officer of police, and the local policing body, for the police area that includes the restricted area;
- (b) whatever community representatives the local authority thinks it appropriate to consult;
- (c) the owner or occupier of land within the restricted area;

9.3. 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.

9.4. 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.

9.5. A key decision is a Cabinet decision which is likely to:

i) Result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decisions relates, or

ii) Be significant in terms of its effects on communities living or working in an area comprising two or more wards in the area of the Council.

9.6. The Mayor and Cabinet have the authority to approve the recommendation set out in paragraph 3.1 of this report.

### **Appendices**

Appendix 1 - Proposed PSPO

Appendix 2 - Equality Impact Assessment

### **Exempt**

Not applicable

### **Background documents**

None



<b>Report Author</b>	Gerry McCarthy, Head of Community Safety, Enforcement and Business Regulation <a href="mailto:gerry.mccarthy@hackney.gov.uk">gerry.mccarthy@hackney.gov.uk</a> 020 8356 7087
<b>Comments for the Group Director of Finance and Corporate Resources prepared by</b>	Avril Smith, Service Accountant <a href="mailto:avril.smith@hackney.gov.uk">avril.smith@hackney.gov.uk</a> Tel: 020 8356 3947
<b>Comments for the Director of Legal, Democratic and Electoral Services prepared by</b>	Jo Sterakides, Senior Lawyer <a href="mailto:josephine.sterakides@hackney.gov.uk">josephine.sterakides@hackney.gov.uk</a> 020 8356 2775