

HEADING **Public Space Protection Orders: Dog Control**
Submitted by: **Head of Environmental Health Services**
Portfolio: **Operational**
Ward(s) affected: **All**

Purpose of the Report

To advise members of options and to seek permission to consult residents on a proposed Public Spaces Protection Order in respect of dog controls.

Recommendations

Members are asked to approve consultation be started on a proposed public spaces protection order, in respect of dog controls, as detailed in Appendix A.

Reasons

The controls are currently drafted to be as flexible as possible and enable the Authority to effectively target enforcement. The proposed controls are considered suitable for our current needs and for up to three years when they must be reviewed again.

1. Background

- 1.1. Since 1st April 2013 a number of 'Dog Control' orders have been in force, which apply in a variety of locations across the borough. Provisions within the Antisocial Behaviour Crime and Policing Act 2014 mean that current controls will cease to have effect after October 2017. If these controls are still needed, an equivalent Public Space Protection Order (PSPO) needs to be made, by following a process outline in the 2014 Act.
- 1.2. The PSPO are intended to deal with a particular nuisance or problem in an area. The behaviour must be having a detrimental effect on the quality of life of those in the community, it must be persistent or continuing and it must be unreasonable. The PSPO can impose restrictions on the use of that area which apply to everyone who is carrying out that activity. The orders are designed to ensure that the law-abiding majority can enjoy public spaces, safe from anti-social behaviour.
- 1.3. The Council can make a PSPO on any public space within its own area but before doing so it must consult with the Local Police. The Council must also consult whatever community representatives it thinks appropriate. This could relate to a specific group, (for instance a residents' association), or an individual or group of individuals, (for instance, regular users of a park).
- 1.4. Before making a PSPO, the Council also has to publish the draft order in accordance with regulations made by the Secretary of State. An interested person can challenge the validity of a PSPO in the High Court on two grounds: (1) that the Council did not have the powers to make the order or to include prohibitions or requirements, or (2) that one of the requirements (for instance, consultation) had not been complied with. An 'interested person' means an individual who lives in the restricted area or who works or regularly visits that area.
- 1.5. If adopted a PSPO can operate for a maximum of three years. It may be refreshed for a further period, but only after a review and consultation exercise confirms there remains a need for the control.

- 1.6. We estimate that approximately one in five households in Newcastle-under-Lyme have at least one dog, with a total dog population of approximately 15,000-17,000.

2. Issues

- 2.1. The Authority now needs to decide if it feels that some form of dog control should be retained after October 2017.

- 2.2. Key considerations will be:
 - 2.2.1. The Evidence Base for Making a PSPO.
 - 2.2.2. Finance & Resources.
 - 2.2.3. Residents' Expectations & Authority's Priorities / Capacity.

The Evidence Base for Making a PSPO

- 2.3. The Authority is obliged to make proportionate and reasonable use of its powers and should reflect if there is the need to introduce a control. Our current evidence is that although there is generally a high level of compliance with present controls, dog related complaints still represent a considerable caseload for the authority with 200 complaints passed to the Council's dog wardens and 600 fouling removal request dealt with by Streetscene each year. It is considered that if controls were withdrawn behaviours would change and complaints and problems increase. The proposed consultation will help clarify if our residents believe there is an issue which needs to be addressed.

Finance & Resources

- 2.4. The direct costs to the Authority of updating its dog controls would be in terms of publicity, namely leaflets (£1,000), public notices published in the press (£1,700), temporary laminated signs explaining proposals (£3,000¹) (during consultation), and permanent signage if controls adopted. The total cost of pre-publicity and consultation is estimated to be £7,000.
- 2.5. Permanent signage cost is dependent upon which controls are adopted and where they are applied. Signage must contain the date the Order becomes effective, so would have a maximum life of three years. The typical cost of placing an A5 sized permanent sign would cost £15-£20 (excluding installation)². Adding new signs purely relating to dog controls at each entrance to the key locations listed for exclusions or dogs on leads controls is likely to cost £6,750 - £9,000. There is scope for this information to be contained on other signage at these locations e.g. park notice boards, and officers will look if there is a more cost effective way to promote controls at these locations.
- 2.6. The level of signage required will depend on public support for proposals. Costed options in respect of signage will be produced for EMT & Members in a future report.
- 2.7. The need for fouling signage will be reviewed during the consultation period, with costed options produced for EMT & Members in a future report. Current thoughts are that these signs could be discontinued.
- 2.8. There would be an on-going cost of approximately £1,000 per year for publicity of controls in year 2 (2018), with the need to restart a review / consultation exercise in year 3 (2019).
- 2.9. The annual cost of sign replacement will depend on the resilience of signs initially placed and the level of vandalism. Recent experience with different controls on Wolstanton Marsh would suggest some signs will need to be replaced several times during the year.

¹ Based on Town Centre PSPO signage

² Price based on composite signs attached with metal clips. Price benchmarked with FOI request to similar authorities

- 2.10. There is currently no provision within the 2017-18 Dog Warden Service budget for consultation, publicity or signage replacement.
- 2.11. If controls cease, there is a risk that with the removal of potential penalties, some currently compliant dog owners may adversely change their behaviour – for example opting not to remove fouling. Whilst savings on enforcement could be made, there is likely to be a net cost to the Authority with increased numbers of complaints and action needed to maintain the cleanliness of public places.

Residents' Expectations & Authority's Priorities

- 2.12. Whenever any form of dog related control is considered the Authority receives considerable feedback from its residents and animal welfare charities and needs to balance the needs of its dog owning residents with the expectations of the broader community. Either adopting or ceasing controls will initially be contentious.
- 2.13. Key corporate priorities are currently:
- Priority Two: A clean, safe and sustainable borough
 - Priority Four: A healthy and active community
- 2.14. Encouraging dog owners to clean up if their dog fouls and to ensure that their pet is kept under proper control when being exercised in public places directly aligns with priority two.
- 2.15. Setting and policing rules to ensure that dog owners and others can amicably share our public places encourages our residents to make full use of them – running, walking, cycling, using play equipment etc. which aligns with priority four.

3. Proposal and Reasons for Preferred Solution

- 3.1. Members are asked to approve consultation be started on a public spaces protection order, in respect of dog controls, as proposed in Appendix A.
- 3.2. If approval is given, Members will then be requested to consider an updated proposal, taking into account representations made through the consultation process, in summer 2017, with a view to new controls becoming operational from September 2017.
- 3.3. The proposals, as currently drafted, best match current Dog Control Orders and would allow for enforcement to continue. Additional elements within the proposals in respect of maximum numbers of dogs in specific locations and the new requirement to carry a bag reflect complaints / pressure from residents.
- 3.4. The controls are currently drafted to be as flexible as possible and enable the Authority to effectively target enforcement. The proposed controls are considered suitable for our current needs and for up to three years when they must be reviewed again.
- 3.5. This is considered an 'invest to save' project, which should improve the cleanliness and safety of public places.

4. Alternative Options Considered

- 4.1. Should Members wish to consider an alternative course of action the following options are available:
- 4.1.1. Take No Action.
- Allow the current Dog Control orders to cease in October 2017 and not be replaced. Remove all current dog restrictions and cease all dog related

enforcement activity – e.g. fouling patrols, exclusions from children’s playgrounds, requirements for dogs to be on leads in cemeteries.

- Removing controls would eliminate the need for complaint investigation and enforcement, with potential savings, however, removing the risk of enforcement may result in the standards of some public places reducing, increase conflict between dog owners and those not owning a dog, and potentially require more ‘clean-up’ resources.

4.1.2. Request the proposed controls be amended prior to consultation.

- Members may wish to change the proposed scope of the controls – for example omit specific controls such as requirement to carry bags, or limits to the number of dogs which may be walked in specific areas
- Members may wish to consider if the types of locations where the controls apply should be amended. Members are reminded that they can make representations in respect of specific locations in their ward, if approval is gained, to further consult. Members will have further opportunity to amend proposals on receipt of a second report in summer 2017.

5. Outcomes Linked to Sustainable Community Strategy and Corporate Priorities

5.1. The proposed PSPO sets ‘rules’ so that all residents can see what the Council expects

5.2. Controls of this nature are necessary if the Authority wishes to maintain the safety and cleanliness of its public places

6. Legal and Statutory Implications

6.1. The Authority is not obliged to adopt a PSPO in respect of dog controls. If it chooses to do so it has full control over their scope. The Authority is obliged to consult on any proposals and needs to be able to defend its controls if challenged.

6.2. PSPOs can be challenged through the High Court if their creation is not in accordance with Statute and Regulation and due process has not been followed.

7. Equality Impact Assessment

7.1. The recommendations in this report do not adversely affect any protected groups.

7.2. Those needing an assistance dog are defined in the Antisocial Behaviour, Crime and Policing Act 2014 as exempted from the PSPO requirements.

8. Financial and Resource Implications

8.1. The Authority is obliged to publicise controls and to ensure that appropriate signs are displayed. Signage would have a maximum life of 3 years. It is envisaged that signs in some locations may need regular replacement as a result of removal or vandalism. These costs have not been included in the estimates in 2.5 above.

8.2. Demand for signage, if offered, is likely to be high, with residents likely to request signs close to their homes. Whilst some 3,000 fouling signs have been used; to project costs for these controls demand could be twice this number.

8.3. The workload of initially adding signs would be considerable. If existing staff were used this would impact on their ability to deliver normal services. If contractors were engaged additional costs would result.

- 8.4. Any changes to dog related controls are likely to generate considerable interest with an increased volume of calls, emails and visits requiring a response from staff.
- 8.5. There is an expectation that enhanced enforcement would follow the implementation of revised controls. The authority does not have the capacity to increase its enforcement, unless other elements of its work are discontinued.

9. Major Risks

- 9.1. There is a risk of legal challenge if the Authority does not follow the correct process to devise, consult and adopt a PSPO, with associated reputational damage.
- 9.2. Whilst the majority of residents are likely to support pragmatic and practical controls, there is a risk that some may choose to disregard controls if they feel they are unfair.

10. Key Decision Information

- 10.1. This report can be considered key in the following ways:
 - a. It requires the Council to commit existing and additional resources for the function to which the decision relates and;
 - b. It impacts on communities living or working in an area comprising two or more electoral wards in the Borough.

11. Earlier Cabinet/Committee Resolutions

- 11.1. Public Protection Committee agreed the current set of Dog Control Orders on 4th February, 2013.
- 11.2. Cabinet agreed amendment to the Council's scheme of delegation adding provisions in respect of the Anti-Social Behaviour, Crime & Policing Act 2014 on 15th October 2014. This decision delegated the power to make, extend, vary and discharge public space protection orders to Public Protection Committee

12. List of Appendices

- 12.1. Appendix A: Draft PSPO

13. Background Papers

- 13.1. Antisocial Behaviour Crime & Policing Act 2014
<http://www.legislation.gov.uk/ukpga/2014/12/part/4/chapter/2/enacted>
- 13.2. Guidance in respect of PSPOs
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final_2_.pdf
- 13.3. Further details on proposals and frequently asked questions
www.newcastle-staffs.gov.uk/dogcontrols
- 13.4. Requirements in respect of publicising public space protection orders
http://www.legislation.gov.uk/uksi/2014/2591/pdfs/uksi_20142591_en.pdf
- 13.5. Amendment to scheme of delegation granting Public Protection Committee power to make public space protection orders.
<http://moderngov.newcastle-staffs.gov.uk/documents/s13554/Cabinet%20Report%20-%20ASB%20Legislative%20changes%20-%20Oct%202014%20v18%20021014.pdf>