

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

**EXECUTIVE MANAGEMENT TEAM'S
REPORT TO**

Licensing and Public Protection Committee
16 March 2021

Report Title: Variation of Public Spaces Protection order in respect of Dog Controls

Submitted by: Head of Environmental Health

Portfolios: Environment & Recycling

Ward(s) affected: All

Purpose of the Report

At the meeting on 12th October 2020, Members requested a further report on possible variations of the approved Public Spaces Protection Order (PSPO) in respect of Dog Controls, in particular relating to the setting of a maximum number of dogs. This report is to provide information to the Committee to confirm if they wish to vary the PSPO. If a variation is required to confirm the changes and approve the public consultation on updated proposals.

Recommendation

It is the recommendation that members:

- a) receive the report and
 - b) agree that no further changes or variations to the existing PSPO are necessary
- Or
- c) propose variations to the PSPO number of dogs and/or locations and
 - d) agree to a public consultation on the proposed variations and
 - e) receive a further report following public consultation.

Reasons

To ensure that any planned changes to a Public Spaces Protection Order received appropriate public scrutiny

1. **Background**

- 1.1 On 12th October 2020 Committee agreed to renew a Public Spaces Protection Order in respect of Dog Controls which had been in force for the previous three years, without material change, following a period of public consultation.
- 1.2 However, Members expressed concern that one of the controls, which sets a maximum number of six dogs in seven key parks, needed further consideration and may need stronger restrictions
- 1.3 Officers advised that if Members wished to change this element, a revised proposal needed to be identified and the support of residents / evidence sought to justify the increased impact of the changes

2. Issues

2.1 A local authority may make or change a public spaces protection order if it is satisfied on reasonable grounds that two conditions are met.

The first condition is that—

- (a) activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or
- (b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect.

The second condition is that the effect, or likely effect, of the activities—

- (a) is, or is likely to be, of a persistent or continuing nature,
- (b) is, or is likely to be, such as to make the activities unreasonable, and
- (c) justifies the restrictions imposed by the notice.

2.2 The Order can be varied by increasing or reducing the restricted area (i.e. adding new locations); and / or by altering or removing a prohibition or requirement included in the order, or adding a new one (e.g. by setting a changed maximum, or other associated conditions).

2.3 The authority is obliged to offer supporting evidence for setting / changing controls, to show that they are both required and their impact can be justified, and to seek the views of its residents and key stakeholders through formal consultation, publicising any proposed changes.

2.4 It is anticipated that two stages will be required. The first 'scoping' stage needs to clarify the appropriate numbers for controls and where they should apply. A second 'proposal' stage could then formally publicise a proposed variation and seek resident's views on the order through a consultation process, as set in statute.

2.5 Whilst controls which oblige dog walkers to remove faeces if their dog fouls a public place, and controls obliging dog owners to keep their pet on a lead in locations such as cemeteries are strongly supported, controlling the number of dogs which can be exercised together divides opinion.

2.6 Borough residents were asked whether controls set in 2017 should continue via a public consultation carried out in August and September 2020 and gave the following response

	Agree	Don't know	Disagree
Q5) Maximum six dogs. Do you agree that we should continue to set a maximum that no more than six dogs can be taken by any one person, into the following locations:			
Apedale Country Park	76%	8%	16%
Bateswood Country Park	76%	8%	16%
Bathpool Park	78%	8%	14%
Clough Hall Park	78%	8%	14%
Silverdale Country Park	77%	7%	16%
Lyme Valley Parkway	78%	8%	14%
Birchenwood Country Park	75%	8%	16%

In additional comments, a number of respondents suggested that the maximum number should be reduced. Full responses were published in Committee's 12th October 2020 report.

2.7 In their guide “Dealing with irresponsible dog ownership: Practitioner’s manual”¹ (October 2014) DEFRA advises:

*“When setting the maximum number of dogs able to be walked by one person, the most important factor for authorities to consider is the maximum number of dogs which a person can control; **expert advice is that this should not exceed six**. Authorities should also take into account the views of dog owning and non-dog owning residents within the area to which the Order will apply, to establish what they consider to be an appropriate maximum number taking into account all the circumstances in the area. Key factors will include whether children frequently use the area, if the park is heavily populated etc.”*

2.8 The views of the RSPCA, Dogs Trust, Kennel Club, Staffordshire Police and Crime Commissioner, Staffordshire County Council, The Land Trust and The Duchy of Cornwall have been sought to help establish if the animal charities, enforcers, or public land owners were able to help guide Members.

2.9 RSPCA offered the following Comments:

“The RSPCA recognises that it is more difficult to regulate dog walkers based on measures other than absolute numbers. However, small numbers of dogs can also cause a nuisance and distress as a result of a dog walker not being in control of them. We are aware that local authorities have introduced PSPOs which allow for dog walkers to be fined where the maximum number of dogs has been exceeded and the RSPCA has also supported penalties for dog walkers causing a nuisance and distress with a smaller number of dogs.

However, we have stressed that should such an approach be adopted, enforcing officers need to be demonstrably competent in recognising when dogs are causing nuisance and distress to ensure the fines are issued fairly and are necessary.”

2.10 The Kennel Club’s view is as follows:

“Maximum Numbers

We feel that an arbitrary maximum number of dogs a person can walk is an inappropriate approach to dog control that can result in displacement and subsequently intensify problems in other areas. The maximum number of dogs a person can walk in a controlled manner is dependent on a number of other factors relating to the walker, the dogs being walked, whether leads are used, and the location where the walking is taking place.

An arbitrary maximum number can also legitimise and encourage people to walk dogs up to the specified limit, even if at a given time or circumstance they cannot control that number of dogs.

We thus suggest instead that defined outcomes are used to influence people walking one or more dogs – domestically or commercially – such as dogs always being under control or on lead in certain areas. An experienced dog walker, for example, may be able to keep a large number of dogs under control during a walk whilst an inexperienced private dog owner may struggle to keep one dog under control. Equally, the size and training of dogs are key factors, hence why an arbitrary maximum number is inappropriate. The Kennel Club would recommend the local authority instead uses the ‘dogs on lead by direction’ measures and other targeted approaches – including Acceptable Behaviour Contracts and Community Protection Orders – to address those who do not have control of the dogs that they are walking.

A further limitation of this proposed measure is that it does not prevent people with multiple dogs walking together at a given time, while not exceeding the maximum number of dogs per person. Limits may also encourage some commercial dog walkers to leave excess dogs in their vehicles, causing severe animal welfare concerns.

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/373429/dog-ownership-practitioners-manual-201411.pdf

If the proposed measure is being considered as a result of issues arising from commercial dog walkers, we suggest councils instead look at accreditation schemes that have worked successfully in places like East Lothian. These can be far more effective than numerical limits as they can promote good practice rather than simply curbing the excesses of just one aspect of dog walking. Accreditation can also ensure dog walkers are properly insured and act as advocates for good behaviour by other dog owners.

Appropriate signage

It is important to note that in relation to PSPOs, The Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014 makes it a legal requirement for local authorities to –

“cause to be erected on or adjacent to the public place to which the order relates such notice (or notices) as it considers sufficient to draw the attention of any member of the public using that place to –

(i) the fact that the order has been made, extended or varied (as the case may be); and

(ii) the effect of that order being made, extended or varied (as the case may be).”

Regarding dog access restrictions, such as a ‘Dogs on Lead’ Order, on-site signage should clearly state where such restrictions begin and end. This can be achieved with signs that say on one side, for example, ‘You are entering [type of area]’ and ‘You are leaving [type of area]’ on the reverse.

With regards to the proposed variation, the Council should erect appropriate signage to inform dog walkers that they are entering an area with restrictions on the number of dogs that can be walked by one person at any given time, to ensure that the measure is compliant with legislation.

2.11 The Land Trust, which maintains Silverdale Country Park offers the view:

“We are broadly content with the existing rules which stipulate a maximum of 6 dogs can be walked by one person at any one time. This aligns with our own ‘Dog walking code’ at Silverdale Country Park.

There have been some issues regarding the ‘per person’ element, as under the current rules a group of two walkers could legitimately have 12 dogs between them (or 3 walkers 18 etc). We would welcome consideration of an amendment to the rule, so that the ‘Six dogs’ rule applies to a group of walkers, rather than an individual.

If the above amendment cannot be made, we are content with the existing rules, as they have been since 2017. We would not support the rule being relaxed, to allow more than six dogs per person”.

2.12 No other responses have been received.

2.13 One in four households (14,000) in Newcastle are thought to own a dog. Of those around 72% have just one dog, about 22% two dogs, 4% have 3 dogs with the remaining 2% (280 families) owning 4 or more dogs.

2.14 Whilst most residents will walk just their own dogs, some may also walk neighbour’s/relatives dogs along with their pet and there are an increasing number of businesses which walk other people’s dogs. Setting a lower limit could impact adversely on these people and result in them switching to other locations.

2.15 The current wording of the control create an offence for a person to take more than six dogs into a restricted location. A number of respondents make the valid point that a number of dogs may be exercised together by a family group, or when friends meet.

2.16 Whilst there are a small number of reports to the Dog Warden of residents feeling intimidated when meeting a number of dogs, the majority of reports of injury stem from encounters with typically a single dog, generally where one dog shows aggression to another.

2.17 There is currently no clear definitive evidence in relation to the 6 dog rule.

3 Options

3.1 Members have a range of options including:

- (a) Make No Change. Retain the current controls as set in the present PSPO so that enforcement action is only triggered if a person take more than six dogs into one of the seven parks currently identified namely:
 - a. Apedale Country Park
 - b. Bateswood Country Park
 - c. Bathpool Park
 - d. Clough Hall Park
 - e. Silverdale Country Park
 - f. Lyme Valley Parkway
 - g. Birchenwood Country Park (**RECOMMENDED**)
- (b) Change Maximum Numbers. Propose a different maximum e.g. 5 or 4, consult residents and establish if the revised number can be justified
- (c) Changed Locations: Add additional places to the list at (a) and consult residents. Locations should have clear boundaries / access points so that it is clear to dog walkers when they are entering and leaving an area with restrictions.
- (d) Remove Control: Decide that setting a number or defining specific locations is inappropriate and remove this element entirely from the PSPO

4 Proposal

4.1 Officers recommendation remains that the current maximum of six dogs at the seven specified locations should remain unchanged (option a above). Officers cannot currently offer evidence that setting a lower number will materially change the number of dog related injuries or public complaints. Reducing the number is likely to prevent professional dog walkers from using these key green spaces resulting in their greater use of less suitable locations such as sports pitches.

4.2 It is the recommendation that members:

- a) receive the report and
- b) agree that no further changes or variations to the existing PSPO are necessary
or
- c) propose variations to the PSPO number of dogs and locations and
- d) agree to a public consultation on the proposed variations and
- e) receive a further report following public consultation.

5 Reasons for Proposed Solution

5.1 Members have requested further information in relation to the number of dogs element of the PSPO controls. Officers have sought additional information, which is set out in the report. The

information does not provide a clear steer regarding the number of dogs or proposed locations for these controls.

6. **Legal and Statutory Implications**

6.1 Public Spaces Protection Orders must be made, extended, varied or discharged in accordance with the Anti-social Behaviour, Crime and Policing Act 2014

6.2 Details a PSPO that is made, extended, varied or discharged must be published in accordance with The Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014. The Act sets lighter touch consultation requirements to save costs (for example, there is no duty to advertise in local newspapers).

6.3 An appeal to the High Court can be made by someone who lives in the area or regularly visits the area and must be made within six weeks of the order or variation of the order being applied for. However, this does not preclude others (such as national bodies) from seeking judicial review.

7. **Equality Impact Assessment**

Not applicable

8. **Financial and Resource Implications**

The continuing of current controls creates no additional resource demands or savings

9. **Major Risks**

Not applicable

10. **Sustainability and Climate Change Implications**

Not Applicable

11. **Key Decision Information**

Not Applicable

12. **Earlier Cabinet/Committee Resolutions**

Members agreed the current controls on 12th October 2020.

13. **List of Appendices**

none

14. **Background Papers**

none