

Executive Board
19 July 2022

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| Subject: | Extension of the Public Spaces Protection Orders in Respect of Dogs |
| Corporate Director(s)/Director(s): | Frank Jordan, Corporate Director for Resident Services Andrew Errington, Director for Community Protection |
| Portfolio Holder(s): | Councillor Neghat Khan, Portfolio Holder for Neighbourhoods, Safety and Inclusion |
| Report author and contact details: | Alex Cox, Operations Manager – Community Protection alex.cox@nottinghamcity.gov.uk Simon Hopson, Enforcement Officer – Community Protection simon.hopson@nottinghamcity.gov.uk |
| Other colleagues who have provided input: | Melanie Fretwell, Principal Enforcement Officer – Community Protection |
| Subject to call-in: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | |
| Key Decision: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| Criteria for Key Decision: | |
| (a) <input type="checkbox"/> Expenditure <input type="checkbox"/> Income <input type="checkbox"/> Savings of £750,000 or more taking account of the overall impact of the decision | |
| and/or | |
| (b) Significant impact on communities living or working in two or more wards in the City <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| Type of expenditure: <input type="checkbox"/> Revenue <input type="checkbox"/> Capital | |
| Total value of the decision: Nil | |
| Wards affected: All | |
| Date of consultation with Portfolio Holder(s): | |

Relevant Council Plan Key Outcome:

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|---------------------------------|-------------------------------------|
| Clean and Connected Communities | <input type="checkbox"/> |
| Keeping Nottingham Working | <input type="checkbox"/> |
| Carbon Neutral by 2028 | <input type="checkbox"/> |
| Safer Nottingham | <input checked="" type="checkbox"/> |
| Child-Friendly Nottingham | <input type="checkbox"/> |
| Healthy and Inclusive | <input type="checkbox"/> |
| Keeping Nottingham Moving | <input type="checkbox"/> |
| Improve the City Centre | <input type="checkbox"/> |
| Better Housing | <input type="checkbox"/> |
| Financial Stability | <input type="checkbox"/> |
| Serving People Well | <input type="checkbox"/> |

Summary of issues (including benefits to citizens/service users):

One of the Council's ambitions is for all those living in, working in, or visiting the city to enjoy safe, clean, vibrant, and attractive public spaces. There have been in the past significant problems caused by dog-related anti-social behaviour, nuisance and disorder across the city. Evidence at the time showed that these issues impacted greatly on the quality of the life for the residents, visitors and businesses alike.

Public Space Protection Orders (PSPOs) provide a mechanism whereby the Council has additional powers to address the anti-social behaviour and nuisance created by dogs. As such, on 17 May 2016, the Council's Executive Board approved the making of four PSPOs in respect of dogs to address and control various problems associated with dogs in relation to nuisance and annoyance to the public, and these were implemented across the Council's administrative area in 2016 to ensure that the problems being experienced at that time were not pushed into neighbouring areas. This ensured that the problems caused by dog-related anti-social behaviour, nuisance and disorder across the city were dealt with effectively. These PSPOs are detailed in Recommendation 1 of this report.

The powers arising from the PSPOs are not intended to disrupt peaceful activities, such as families or groups taking their dog out for a walk. They are solely used as a control measure for dogs to be kept under control by their owners at all times. They have successfully supported the Council in its efforts to stop irresponsible dog owners from causing anti-social behaviour and associated harassment, alarm and distress to members of the public.

The Nottingham City Council Dogs on Lead by Direction Public Spaces Protection Order 2016 has ensured that the correct balance of use has been maintained for all park users and has successfully supported the Council's commitments towards protecting its citizens and providing a safe and friendly environment for all park users and animals.

PSPOs may not have effect for a period of more than 3 years, unless first extended pursuant to section 60 of the Anti-social Behaviour, Crime and Policing Act 2014 ('the 2014 Act'). The Dog Control PSPOs, as originally made, therefore all had an expiry date of 25 September 2019. On 16 July 2019, the Executive Board approved the extension of the Dog Control PSPOs for a further 3 years, with a new expiry date of 24 September 2022, if they are not first extended. Following the formal public

consultation as approved by the Portfolio Holder for Neighbourhoods, Safety and Inclusion, it is proposed that the Dog Control PSPOs are extended for a further 3 years, to expire on 23 September 2025.

Does this report contain any information that is exempt from publication?

No

Recommendation(s):

1. To authorise the extension of the following Public Spaces Protection Orders (having been satisfied that the test in Section 60 of the Anti-Social Behaviour, Crime and Policing Act 2014 is met and having regard to the rights of freedom of expression and freedom of assembly) so that they remain in effect for a further period of three years from 24 September 2022:

- Nottingham City Council Dogs on Leads by Direction Public Spaces Protection Order 2016 (PSPO 1 – Appendix 1);
- Nottingham City Council Dogs on Lead Public Spaces Protection Order 2016 (PSPO 2 – Appendix 2);
- Nottingham City Council Dogs Exclusion Public Spaces Protection Order 2016 (PSPO 3 – Appendix 3); and
- Nottingham City Council Fouling of Land by Dogs and Requirement to Produce Device for or Other Suitable Means of Removing Dog Faeces Public Spaces Protection Order 2016 (PSPO 4 – Appendix 4).

2. To delegate authority to the Director for Community Protection to carry out the necessary publication in relation to the extended Public Spaces Protection Orders, and to arrange for current signage to be amended in accordance with the legislative requirements.

1. Reasons for recommendations

1.1 The 16 July 2019 Executive Board meeting approved the first extension of the Dog Control PSPOs, which extended the period for which they have effect. PSPOs can only be in effect for a maximum of three years, and the Dog Control PSPOs will expire on 24 September 2022. Under Section 60(2) of the 2014 Act, the Dog Control PSPOs can be extended for up to three years if, before it is due to expire, the Council is satisfied on reasonable grounds that doing so is necessary to prevent:

(a) the occurrence or recurrence after that time of activities identified in the citywide PSPOs as respects dogs; or

(b) an increase in the frequency or seriousness of those activities after that time.

Section 60(2) of the 2014 Act confirms that an extension under Section 60 of the 2014 Act may not be for a period of more than three years.

- 1.2 Before a PSPO can be extended, consultation must be undertaken in accordance with the 2014 Act, regulations made thereunder and statutory guidance. This includes consulting with:
 - (a) the Chief Officer of the Police and the local policing body for the police area that includes the restricted area;
 - (b) the Police and Crime Commissioner;
 - (c) whatever community representatives the local authority thinks it appropriate to consult; and
 - (d) the owners and occupiers of land within the restricted area, so far as is reasonably practicable.
- 1.3 When extending a PSPO, the Council must also have particular regard to the rights of freedom of expression and freedom of assembly set out in Articles 10 and 11 of the Human Rights Convention.
- 1.4 On 28 March 2021, the Portfolio Holder for Neighbourhoods, Safety and Inclusion authorised that formal consultation be undertaken on the proposal to extend the effect of the citywide PSPOs as respect dogs for a further three years from 24 September 2022.
- 1.5 Breach of a requirement or restriction contained in a PSPO, without reasonable excuse, is an offence. The penalty for committing an offence contained in a PSPO is a fine of Level 3 on the standard scale (current maximum fine £1,000), although the opportunity to pay a fixed penalty notice (FPN) may be offered instead.
- 1.6 Having undertaken formal public consultation, it is considered that the restrictions and requirements contained in the Dog Control PSPOs, as shown at Appendix 1-4, are a reasonable and proportionate means of addressing the behaviours identified therein. It is also considered that the test in Section 60 of the 2014 Act is met in respect of the proposed extension and having regard to the rights of Freedom of Expression and Freedom of Assembly.
- 1.7 If the Dog Control PSPOs were allowed to expire, the above described behaviours are likely to increase to the detriment of city centre residents, businesses and tourists, the Council's officers would no longer being able to tackle the behaviours using the powers contained in the Dog Control PSPOs.
- 1.8 By virtue of regulations made pursuant to the 2014 Act, namely the Anti-Social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014, the Council is required to cause to be erected on, or adjacent to the public place to which the PSPO relates, signage to draw attention to members of the public of the existence of the order and any extension.

1.9 The Board is asked to note that the Council has undertaken consultation in relation to the proposed extension to the expiry date of the Dog Control PSPOs only. Any other potential amendment(s) to the Dog Control PSPOs would first require formal consultation, publicity and notification in accordance with the 2014 Act and such consultation authorised in accordance with the Council's Constitution. The Dog Control PSPOs will expire on 24 September 2022 if not first extended.

2. Background

2.1 Dealing with the issue of dangerous and/or out of control dogs and associated anti-social behaviour continues to be a high priority for the Council across its administrative area and this issue regularly receives coverage in the local press. On 17 May 2016, the Council's Executive Board approved the making of four PSPOs in respect of dogs across its administrative area in order to address and control various problems associated with dogs in relation to nuisance and annoyance to the public across Nottingham. These problems were often caused by irresponsible dog owners allowing their dogs to intimidate citizens in Nottingham. The dogs also posed a danger to citizens and traffic control and damage to play equipment, street furniture and the wildlife and trees.

2.2 PSPOs may not have effect for a period of more than 3 years, unless first extended pursuant to Section 60 of the 2014 Act. The Dog Control PSPOs, as originally made, therefore all had an expiry date of 25 September 2019. On 16 July 2019, Executive Board approved the extension of the Dog Control PSPOs for a further 3 years, with a new expiry date of 24 September 2022, if they are not first extended. The report therefore recommends that the Dog Control PSPOs are extended for a further 3 years, to expire on 23 September 2025.

2.3 In 2016, evidence and complaints from a number of sources, including review of social media, over 10,000 face-to-face surveys, customer service requests, complaints, and feedback from front line staff, indicated that there were a variety of ongoing behaviours occurring citywide that were having a detrimental effect on the quality of life of those living in, working in or visiting it.

Consultation Process

2.4 Formal consultation on the extension of the Dog Control PSPOs for a further three years was authorised through a delegated decision by the Portfolio Holder for Neighbourhoods, Safety and Inclusion on 28 March 2022. Consultation was undertaken over a period of eight weeks, commencing on 5 April 2022 and ending at on 30 May 2022. As part of the consultation process, the Council sought the views of:

- the Chief Officer of the Police;
- the Police and Crime Commissioner;
- Nottingham City Homes;
- all schools with the city boundary;
- dog groups; and
- the relevant departments within the Council (Parks and Open Spaces, and Senior Community Protection Officers).

2.5 The Dog Control PSPOs, and associated documentation, were placed on the Council website, to allow wider public comment on the proposed extension of the Dog Control

PSPOs for a further three years. The Dog Control PSPOs and associated documentation were cascaded to the Community Protection Officers (CPOs) to allow for public comment should they encounter any dog related anti-social behaviour.

Consultation Responses

- 2.6 No responses were received to the consultation from any of the organisations that were written to and asked for comment, and four public consultation comments were received. Responses from the public are supportive of the proposals to extend the Dog Control PSPOs and there were no concerns raised by any other of the organisations. Public comments included: "I support the proposed extension", "I am in full support of the extensions", "as a dog owner myself I agree that owners should have the responsibility to keep other members of the public safe and these orders should help to enforce this".

Convention Rights

- 2.7 As required by the 2014 Act, the Council has had particular regards to the rights of freedom of expression and freedom of assembly set out in Articles 10 and 11 of European Convention on Human Rights, as well as having regard to other freedoms and rights contained within the Convention.
- 2.8 Human rights contained in the Convention can often conflict and need to be balanced to protect both individuals and the wider society. There is an expectation that those asserting rights will behave responsibly and to respect the rights of others. The terms of the Dog Control PSPOs attempt to balance those competing human rights and impose only reasonable and proportionate restrictions on individual behaviours so as to safeguard the rights of other individuals and the wider society.

Signage

- 2.9 Current signage will be amended accordingly inclusive on the new expiry date should the extension be approved.

Enforcement

- 2.10 From the weekly statistical data provided by the CPOs during the period of October 2019 to end of March 2022 (the period since the last extension came into force), there have been a total of 385 FPNs issued by CPOs in relation to breaches of the Dog Control PSPOs.
- 2.11 The FPNs that were issued are broken down into 3 periods, with 112 FPNs issued between October 2019 and March 2020, 107 FPNs issued between April 2020 and March 2021, and 166 FPNs issued in the financial year April 2021 to March 2022.
- 2.12 In addition, CPOs have reportedly conducted 1684 operations to tackle the varying anti-social behaviour issues related to the Dog Control PSPOs. Before taking enforcement action against any person for dog fouling offences, CPOs ensure that safeguarding and reasonable adjustments are observed, with the intention of ensuring that those who are disabled, do not indirectly breach the terms of PSPO 4 of the Dog Control PSPOs by not being able to remove faeces.

Byelaws

2.13 Byelaws such as the Regulations of Dogs at Robin Hood Chase, Dogs at Woodthorpe Park, on the Old Market Square and the Colwick Park Byelaws have been made in Nottingham and where in force, these Byelaws contain various dog controls as detailed in the Orders attached in the background papers, breach of which is an offence. However, they only apply to limited parts of the administrative area of Nottingham and the maximum fine on conviction in the Magistrates' Court for breach is, at most, a level 2 fine. Currently there is no fixed penalty notice available as an alternative to prosecution. By virtue of Section 70 of the 2014 Act, existing byelaws that prohibit an activity regulated by a PSPO will be of no effect in relation to the restricted area during the currency of the PSPO.

3. Other options considered in making recommendations

3.1 To allow the current PSPOs to expire: this option is rejected because there is strong evidence that the Dog Control PSPOs have been effective in reducing dog-related anti-social behaviour incidents across the area. The Dog Control PSPOs create valuable enforcement powers for the Council without which there are limited tools available to achieve the same impact. Relinquishing the current enforcement powers available is likely to result in an increased level of anti-social behaviour incidents citywide. There are no longer alternative existing powers to control various problems associated with dogs in the administrative area of Nottingham as the Council's Executive Board approved the revocation of the Order under the Dogs (Fouling of Land) Act 1996 in May 2016 in order for it to be replaced by the PSPOs. The Dog Control Orders under the Clean Neighbourhoods and Environment Act 2005 were also superseded by the Dog Control PSPOs and are no longer available.

4. Consideration of Risk

4.1 There is no known risk, as the proposal is for an extension to a current PSPO that has been previously extended.

5. Finance colleague comments

5.1 This report recommends the extension of the current Citywide PSPOs as respect dogs Policy (in line with approved Delegated Decision 4580) for a further period of 3 years (24 September 2022 through to 23 September 2025). There are minimal financial implications identified as a result of this decision or as a result of extending this PSPO as the required signage as required under the 2014 Act is already in place and can easily be amended in relation to the dates shown on the notices.

5.2 There is no specific funding available for this work so any costs that are incurred for this continuation must be met from within the Medium-Term Financial Plan of the Community Protection Directorate.

Comments provided by Susan Turner, Senior Commercial Business Partner, on 26 May 2022.

6. Legal colleague comments

- 6.1 The Council's Constitution states that where an extension to a PSPO is significant in the opinion of the relevant Director, the relevant Portfolio Holder is responsible for commencing the consultation process and the Executive Board is responsible for deciding whether to approve the making of the extension following consultation. The proposed extension to the Dog Control PSPOs contains restrictions which apply across significant areas of the Administrative Area of the Council, and the Portfolio Holder for Neighbourhoods, Safety and Inclusion authorised the formal consultation via a Delegated Decision. This decision therefore appears to be within the remit of Executive Board.
- 6.2 As identified in the report, extensions to current PSPOs should only be made where the Council is satisfied on reasonable grounds that the legal test in section 60(2) of the 2014 Act is met in relation to all of the areas that the PSPOs apply to. The Council can only make extensions to prohibitions or requirements which are reasonable in order to prevent an occurrence or recurrence or to prohibit an increase in the frequency or seriousness of those activities.
- 6.3 When deciding whether to make an extension to a PSPO, and if so for how long, 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 Convention (as provided by section 72(1) of the 2014 Act).
- 6.4 As identified in the report, the Council has undertaken a consultation exercise regarding the extension to the Dog Control PSPOs, which appears to be in compliance with the requirements set out in the 2014 Act and Guidance. The requirement to consult owners and occupiers of land within the Restricted Areas only applies to the extent that it is reasonably practicable.
- 6.5 The Council should consider any representations received during the consultation when considering whether to make an extension of the Dog Control PSPOs. The consultation responses are summarised in the report.
- 6.6 It is proposed that, if made, the extension to the Dog Control PSPOs will last for a further period of three years. Under section 60(1) of the 2014 Act this is the maximum period that a PSPO can have effect for. However, under section 60(2) of the 2014 Act there is provision for PSPOs to be extended for a further period of up to three years. There is no restriction on the number of times that PSPOs can be extended. As identified in the Report, the Council must comply with publication and signage requirements if the Dog Control PSPOs are extended.
- 6.7 As identified in the report, the powers that relate to control of dogs and provide enforcement powers to deal with those who do not remove their dogs' faeces including the DCOs and the 1998 Order made under the Dogs (Fouling of Land) Act 1996 were revoked and are no longer viable options for dealing with dog related anti-social behaviour.

Byelaws

- 6.8 As stated in the report, the existing Byelaws only apply to limited parts of the Administrative Area of Nottingham. In addition, Byelaws requiring the removal of dog faeces from land to which the 1998 Order previously applied have been repealed and are no longer available. However, there is no proposal to formally repeal those Byelaws which are still in force namely the Regulations of Dogs at Robin Hood Chase, Dogs at Woodthorpe Park, on the Old Market Square and the Colwick Park Byelaws. If the extension to the Dog Control PSPOs area made, the existing Byelaws which remain in force which cover the same restrictions as the Dog Control PSPOs will continue to be unenforceable for the duration of the Dog Control PSPOs. Byelaws which remain in force and which do not cover the same restrictions as those included in the Dog Control PSPOs will not be affected.

Comments provided by Tamazin Wilson, Solicitor, on 25 May 2022.

7. Crime and Disorder Implications

- 7.1 Section 17 of the Crime and Disorder Act 1998 places a duty on Councils to do all they reasonably can to prevent crime and disorder. The renewal of the order will continue to provide powers to deal with the anti-social behaviour identified within the Dog PSPO.
- 7.2 Section 67 of the Anti-Social Behaviour, Crime and Policing Act 2014 provides the Local Authority accredited officers and the Police with the power to deal with anti-social behaviour, nuisance and disorder under Section 59 of the Act as a PSPO. Section 67 of the Act makes it an offence for a person without reasonable excuse to do anything that the PSPO prohibits them from doing, or fail to comply with a requirement. Failure to comply with the officer's request becomes an offence that can result in a fixed penalty notice or a fine. In order to ensure a proportionate use of the powers, all accredited officers are trained in these powers fully before commencing their role and/or dealing with breaches of the PSPO.

8. Equality Impact Assessment (EIA)

- 8.1 An EIA has been produced and is attached as Appendix 8, and due regard will be given to any implications identified in it.

9. Data Protection Impact Assessment (DPIA)

- 9.1 A DPIA is not required because records will be managed in compliance with the Council's legislative requirements.

10. Carbon Impact Assessment (CIA)

- 10.1 A CIA is not required because the proposals do not have a carbon impact.

11. List of background papers relied upon in writing this report

- 11.1 None.

12. Published documents referred to in this report

12.1 Anti-social Behaviour Crime and Policing Act 2014

12.2 Home Office Guidance – Anti-social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers – Statutory guidance for frontline professionals – Updated December 2017

12.3 Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014

12.4 Delegated decision of the Portfolio Holder for Neighbourhoods, Safety and Inclusion dated 28 March 2022 authorising public consultation

12.5 Delegated decision of the Director for Community Protection dated 24 August 2017 setting the amount of the FPN for breach of PSPOs