

Nottingham City Council Delegated Decision



Nottingham
City Council

Reference Number:

2195

Author:

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Department:

Communities

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Subject:

Public Spaces Protection Order

Total Value:

29.00 per sign estimated 50 signs (Type: Capital and Revenue)

Decision Being Taken:

The Director of Community Protection to be authorised to carry out consultation processes required with regard to:

The proposed revocation of eight Dog Control Orders made under the Clean Neighbourhoods and Environment Act 2005 ("the 2005 Act"), attached as appendix 1 to 8,

The proposed Order, attached as appendix 9, to revoke the Nottingham City Council Dog Fouling Order 1998 made under the Dogs (Fouling of Land) Act 1996 ("the 1996 Act"); and

The proposal to make Public Spaces Protection Orders ("PSPOs") under the Anti-social Behaviour, Crime and Policing Act 2014 ("the 2014 Act"), drafts of which are attached as appendixes 10 to 13, namely:

Nottingham City Council Dogs on Leads by Direction Public Spaces Protection Order 2015;

Nottingham City Council Dogs on Leads Public Spaces Protection Order 2015;

Nottingham City Council Dogs Exclusion Public Spaces Protection Order 2015; 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 2015.

Reasons for the Decision(s)

A need has been identified to control various problems associated with dogs in relation to nuisance and annoyance to the public across Nottingham City Council's administrative area. The problems are often caused by irresponsible dog owners allowing their dogs to intimidate citizens in Nottingham and run amok within the urban areas of Nottingham without being under the full control of their owners. Evidence shows that these issues impact greatly on the quality of life for the residents, visitors and businesses alike by intimidation to citizens, posing a danger to citizens and traffic control, and damage to play equipment, street furniture and the wildlife and trees. This undoubtable is having a detrimental effect on the quality of life of those in the locality.

There are some existing powers to control problems associated with dogs in (parts of) the administrative area of Nottingham:

Order under The Dogs (Fouling of Land) Act 1996 ("the 1996 Act"). Nottingham City Council ('the Council') made the 'Nottingham City Council Dog Fouling Order 1998' ("the 1998 Order") under the 1996 Act prior to the repeal of the 1996 Act, and this made it an offence to fail to remove dog faeces forthwith from land that the 1998 Order applies to. This being:

'all land to which the public are entitled or permitted to have access (with or without payment) and which is not used for agriculture or woodlands and which is not predominately marshland, moor or heath. All carriageways with a speed limit of 40 mph or less and adjoining pathways and verges.'

The 1998 Order remains in force other than in relation to land that the Council had made Dog Control Orders over (see below). A fixed penalty notice is available as an alternative to prosecution for this offence, although limited to £50.

Dog Control Orders under the Clean Neighbourhoods and Environment Act 2005 ("the 2005 Act").

The following Dog Control Orders ("DCOs") attached as appendix 1 to 8 have been made by the Council under the 2005 Act:

The Nottingham City Council Fouling of Land by Dogs and Dogs on Leads by Direction (Chediston Vale Open Space and Children's Playground) Order 2011;

The Nottingham City Council (Lenton Abbey Estate) Dogs on Leads Order 2012;

The Nottingham City Council (Lenton Abbey Estate) Fouling of Land by Dogs Order 2012;

The Nottingham City Council (Dales Ward) Fouling of Land by Dogs Dog Control Order 2014;

The Nottingham City Council (Dales Ward Urban Areas) Dogs on Leads Dog Control Order 2014;

The Nottingham City Council (Dales Ward) Dogs Exclusion Dog Control Order 2014;

The Nottingham City Council (Dales Ward) Dogs on Leads by Direction Dog Control Order 2014; and

The Nottingham City Council (Dales Ward) Dogs on Leads Dog Control Order 2014 (2)

These DCOs, made under section 55 of the 2005 Act, apply to various areas of land which is open to the air and to which the public have access with or without payment as detailed in the DCOs in the Lenton Abbey Estate, Dales Ward and in relation to the Chediston Vale open space and play area. Breach of these DCOs is an offence, and a fixed penalty notice is available as an alternative to prosecution. Section 55 of the 2005 Act has now been repealed, and although the above DCOs could remain in force until 19 October 2017, no new DCOs can now be made.

Byelaws such as:

Byelaws for the Regulation of Dogs at Robin Hood Chase

Byelaws for the Regulation of Dogs at Woodthorpe Park

Dogs on Leads for Old Market Square

Colwick Park Byelaws

Where in force these Byelaws contain various dog controls. 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.

There are other powers available to control dogs, such as education and engagement, early intervention using non-statutory measures, Acceptable Behaviour Contracts, Injunctions, Criminal Behaviour Orders, dispersal powers and other dog control legislation. Examples of these powers are detailed in the 'Dealing with irresponsible dog ownership Practitioner's manual' dated October 2014, appended as 14.

The existing powers do not apply consistently across Nottingham, and the large number of different Orders has left a confusing 'patchwork' of powers, particularly in relation to owners who have not removed their dog's faeces from land forthwith in different parts of Nottingham. It is proposed that the Council consult on the repeal of the above mentioned eight DCOs and the 1998 Order, and at the same time consult on the making of four new PSPOs under the Anti-social Behaviour, Crime and Policing Act 2014 ("the 2014 Act"). If made, the proposed PSPOs would, subject to some exception, make it an offence to:-

Fail to put dogs on a lead when directed to do so by an authorised officer on land detailed in the proposed 'Nottingham City Council Dogs on Leads by Direction Public Spaces Protection Order 2015' ('Dogs on Leads by Direction Order') at appendix 10, including various public open spaces across the Administrative Area of Nottingham as detailed in the proposed Order.

Fail to keep dogs on a lead on land detailed in the proposed 'Nottingham City Council Dogs on Leads Public Spaces Protection Order 2015' ('Dogs on Leads Order') at appendix 11, including for example most roads and highways across the Administrative Area of Nottingham as detailed in the proposed Order.

Allow dogs to enter areas that they are excluded from as detailed in the proposed 'Nottingham City Council Dogs Exclusion Public Spaces Protection Order 2015' ('Dogs Exclusion Order') at appendix 12 including for example clearly demarcated children's play areas, Local Nature Reserves, Sites of Special Scientific Interest and School/ academy land across the Administrative Area of Nottingham as detailed in the proposed Order.

Fail to remove their dogs faeces forthwith from land that is open to the air and to which the public have access (with or without payment) as detailed in the proposed '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 2015' ('Dog Fouling Order') at appendix 13 as detailed in the proposed Order.

In addition, under the proposed Dog Fouling Order it is proposed that it be an offence for a person in charge of a dog on that land to fail to forthwith produce a device for or other means of removing dog faeces and transporting it to a bin (whether or not the dog has defecated).

Under Section 59 of the 2014 Act, local authorities may make a PSPO if satisfied that on reasonable grounds:-

Activities in a public place have had a detrimental effect on the quality of life of those in the locality, or it is likely that activities will be carried on in the locality and they will have that effect.

The effect/likely effect, of the activities is/or is likely to be persistent/continuing in nature,

is likely to be such as to make the activities unreasonable, and

justifies the restrictions imposed.

The Council must be of the opinion that the problems outlined above meet the test in section 59 of the 2014 Act. The City Council, in conjunction with Nottinghamshire Police already utilise various intervention techniques to help prevent dog related nuisance and annoyance occurring. The powers proposed will assist and strengthen the approach taken by these agencies against those who choose to continue to act in an irresponsible manner in respect of dog ownership.

The proposed PSPOs would help prevent or reduce the detrimental effect of the problems caused by dog related anti-social behaviour, nuisance and disorder across the whole of the Council's Administrative Area. Evidence gathered in the areas where the City has implemented DCOs show a reduction in dog related nuisance and disorder. Unless the powers are adopted across the whole Council area, there is a high likelihood the problems experienced will continue, perhaps being pushed into neighbouring areas across the Council's area rather than being cohesively and effectively dealt with, which it is hoped that the proposed PSPOs will assist the Council to do.

The proposed PSPOs are not intended to interfere with responsible dog owners.

It is recognised that the most contentious part of the proposed PSPOs is where it directly impacts on the City's parks. These are important public areas and it is important that the correct balance of use is obtained for all park users; this includes suitable and sufficient areas where dogs can safely be exercised 'off lead' but provides authorised Officers with the power to require owners to put dogs whom they can see are causing alarm and distress to other park users by being out of control or causing harassment, alarm or distress on a lead.

The Council has considered the needs of dog owners to exercise their dogs off leads within the administrative area of Nottingham, and it is proposed that this will be possible on land that the proposed Dogs on Lead by Direction Order will apply to. It is proposed that authorised officers will only be able to direct that a dog be placed on a lead on this land where necessary to:

'prevent a nuisance or behaviour by the dog likely to cause annoyance or disturbance to any other person on any land that [this] Order applies or the worrying or disturbance of any animal or bird.'

If the proposed PSPOs were made it would become an offence to fail to comply with the Order without a reasonable excuse. Exemptions will be available for the Dog Fouling Order and Dog Exclusion Order for disabled owners with assistance dogs. Penalties for the offences include a Fixed Penalty Notice being issued, expected to be set at £100 (with a £50 reduction if paid within 10 days) or a fine of up to £1000 following prosecution.

If the proposed Dog Fouling Order is made it would apply to more areas of land than the 1996 Act, and fixed penalties for breach of PSPOs can be set locally at a higher rate than under the 1996 Act, which are restricted to £50. It is proposed that the Dog Fouling Order will apply to all areas that the public have access to (with or without payment) which are open to the air in the Administrative Area of Nottingham City Council. There is currently no requirement that people make sure that they have with them sufficient means to remove dog faeces from public land, should their dog foul, so the proposed Dog Fouling Order will also give authorised officers the power to enforce against people who may have no intention to clear up after their dog.

If the proposed PSPOs are subsequently made, 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.

It should be noted that under the 2005 Act it is an offence for a person who has committed an offence under a DCO to fail to give their correct name and or address. Unfortunately it would appear that it will not apply to PSPO offences.

It is proposed that Community Protection Officers, Police Community Support Officers and Police Officers will be 'authorised officers' for the purpose of the proposed PSPOs. If the proposed PSPOs are made, in order to ensure a proportionate use of the powers it is proposed that all authorised officers are trained in these powers fully and (other than in relation to the offence of failing to remove dog faeces forthwith) before enforcement for breach of the PSPOs begins a period of three months is given to citizens not complying with the requirements of the PSPOs with officers giving warnings and instruction on the PSPO requirements across Nottingham's Administrative Area during this period.

Before a PSPO can be made consultation must be under taken in accordance with the 2014, Regulations made under it and statutory guidance. This includes consulting with:

The Chief of Police and the local policing body, for the police area that includes the restricted area

Whatever community representatives the local authority thinks it appropriate to consult

The owner or occupier of land within the restricted area.

If approval to consult is given, it is proposed that Community Protection will liaise with all park friends groups, dog walking groups, dog training groups, and all other associated groups along with the City Council's Parks department and all those affected by the proposals. All Schools, churches, education establishments, and businesses with forecourts will be consulted. The proposed PSPOs will be published on the Council's website, notices will be placed in a newspaper circulating in the area and notices will be placed at intervals in the proposed areas.

Any representations received at the expiry of the consultation period will be reported back to the Executive Board for a decision to be made on the proposed Orders/revocation of DCOs. A consultation period of 6 weeks is being proposed.

If made, it is proposed that the above PSPOs will last for three years.

The 2005 Act, the 1996 Act and regulations made under each Act and statutory guidance detail the process which must be followed to repeal the existing DCOs and the 1998 Order. If Orders were to be made/revoked the Council must publish the PSPOs and details of the Order to revoke the 1998 Order/ revocation of the DCOs in accordance with the various legal requirements.

Other Options Considered:

Dealing with the issue of dangerous and/or out of control dogs and associated anti-social behaviour is a high priority for the city and regularly receives extensive coverage in the local press. The Council has considered and utilises other options, including increased street patrols within the city and increased dog related operations, to deal with the problems that arise. See appendix 14 'Dealing with irresponsible dog ownership Practitioner's manual'. However these are unlikely, in isolation, to be effective in remedying the identified nuisance and disorder. It is recommended that the addition of the proposed PSPOs are needed to assist officers further in curtailing this type of anti-social behaviour.

Increasing street patrols have helped to monitor the situation in the proposed area and act as a deterrent. However, where problems arise across the whole City within areas not currently covered by a Dog Control Order/relevant Byelaw, officers do not presently have the ability to request the dogs to be put on leads and there are not requirements that dogs be kept on a lead at all times, particularly within Urban areas and most notably the Town Centres within Nottingham. There are also no requirements within the current legislation for dog owners to prove their commitment in picking up after their dog has defecated. Therefore the options open to officers are restricted and their actions are less effective than they might otherwise be.

Background Papers:

Include Existing Dog Control Orders, Order under 1996 Act, Byelaws

Published Works:

The 2014 Act
The 2014 Act (Publication of Public Spaces Protection Orders) Regulations 2014
Home Office - Guidance on the 2014 Act
Dealing with irresponsible dog ownership Practitioners Manual October 2014
The 2005 Act
Home Office - Dog Control Orders Guidance on Sections 55 to 67 of the 2005 Act
Dog Control Orders (Procedure) Regulations 2006
The 2005 Act (Commencement No.5, Transitional Provisions and Savings) (England) Order 2006
The 1996 Act
The Dogs (Fouling of Land) Regulations 1996
Circular 18/96 (Department of the Environment) 'The 1996 Act

Affected Wards:

Citywide

**Colleague / Councillor
Interests:****Consultations:**

Those not consulted are not directly affected by the decision.

**Crime and Disorder
Implications:**

Section 2.6 of the Anti-Social Behaviour Crime and Policing Act 2014 Guidance for Frontline Officers July 2014 states that the local authority will want to satisfy itself that these powers are not being used disproportionately or in an arbitrary fashion. Clearly there should be evidence of an existing problem, with an assessment as to the likelihood that the problem will continue unless these powers are adopted and belief that the problem could be remedied by the use of these powers. Against this background, it is possible that a single, serious incident might be sufficient to justify adoption of the powers.

The Order would assist the area by way of reducing and preventing criminal and anti-social acts
As identified in the main body of the report Public Spaces Protect Orders should only be made where the Council is satisfied that to do so would be a necessary and proportionate response to problems caused by the anti-social behaviour being complained of.

Officers would use any powers derived from the making of a PSPO fairly and proportionately as described above. The use of the power is a discretionary one for individual officers. Any general offences or other anti-social behaviour would be dealt with under existing legislative powers.

The Statutory Guidance for Frontline Officers suggests that there must be considerations given to suitable alternatives where dogs can be exercised without restriction where the Council looks to implement restrictions in respect of dogs. It is proposed that all parks and open spaces will be areas where dogs can be exercised off the lead and a request will only be made for the dog to be put on a lead should it be causing alarm and distress to other park users. It is the Council's position that this satisfies this section of the Guidance.

Equality:

EIA not required. Reasons: The Equality and Diversity Team to comment on the proposals

**Regard for NHS
Constitution:**

Local authorities have a statutory duty to have regard to the NHS Constitution when exercising their public health functions under the NHS Act 2006. In making this decision relating to public health functions, we have properly considered the NHS Constitution where applicable and have taken into account how it can be applied in order to commission services to improve the health of the local community.

Decision Type:

Portfolio Holder

Subject to Call In:

Yes

Call In Expiry date:

14/10/2015

Advice Sought:

Legal, Finance, Procurement

Legal Advice:

Control of Dogs and enforcement relating to problems concerning dogs appear to fall within the remit of the Portfolio Holder. As identified in the main body of the decision, Public Space Protection Orders ("PSPOs") should only be made where the Council is satisfied on reasonable grounds, that the legal test in section 59 of the Anti-social Behaviour, Crime and Policing Act 2014 ("the 2014 Act") is met in relation to all of the areas that the proposed PSPOs apply to. The Council can only make prohibitions or requirements which are reasonable to impose in order to prevent or reduce the detrimental effect identified.

Page 51 of the Government Guidance states that the new PSPOs can cover a number of different restrictions and requirements so there should be little need to have overlapping orders in a particular public place. The proposed PSPOs will include some overlapping provisions, but as the proposed PSPOs cover large areas of land, it may be more confusing to try to further separate out the proposed PSPO controls.

If consultation on the making of the proposed PSPOs and revocation of the existing DCOs and Order under the 1996 Act is authorised, the 2014 Act, 2005 Act, 1996 Act and Regulations made under the respective Acts set out the procedure which must be followed which includes consultation and the advertisement of proposals as stated in the Delegated Decision Form.

There is no statutory minimum consultation period specified for proposed PSPOs, although the minimum consultation period for amendment/revocation of a DCO is a minimum of 28 days. The proposed consultation period of six weeks would therefore appear to be reasonable and comply with legal requirements.

If there is any 'access land' in the area that the proposed PSPOs will apply, there are additional consultation requirements which must be complied with.

The DEFRA Guidance 'Dealing with irresponsible dog ownership Practitioner's manual' states at page 45: "Much like with DCOs, if a PSPO restricts access to land used to exercise dogs, it would be reasonable that there is sufficient other land available for exercise without restrictions". The Council should therefore be satisfied that there is sufficient land to exercise dogs in the area to be covered by the proposed PSPO without restriction.

The Council should also consider how easy a PSPO would be to enforce, since failure to properly enforce an Order could undermine the effect of an Order. This is likely to be particularly relevant where dogs are excluded from an area, some of which may not be fenced off areas.

It is noted that the results of the consultation and any other evidence gathered in support of the proposed making or revocation of the Orders will be reported to a future Executive Board meeting for a decision to be taken on whether the proposed Orders should be made/revoked.

If satisfied that the test in Section 59 of the 2014 Act is met in relation to all of the land the proposed PSPOs apply to, and that the proposed Orders are reasonable in order to reduce the detrimental effect described in the body of the decision, the recommendations are in compliance with the legislation.

Advice provided by Tamazin Wilson (Solicitor) on 02/09/2015.

Finance Advice:

There are no detrimental financial implications associated with this decision. Due to the increase in areas, restrictions and fine amount, there is the potential for an increase in fixed penalty income to the authority.

**Michelle Pullen
Senior Finance Assistant
michelle.pullen@nottinghamcity.gov.uk
8763843 Advice provided by Michelle Pullen (Senior Accounts Assistant) on 25/08/2015.**

Procurement Advice:

There are no Procurement issues with this report Advice provided by Paul Ritchie (Procurement Category Manager) on 15/09/2015.

Signatures

Nicola Heaton (Portfolio Holder for Community Services)

SIGNED and Dated: 07/10/2015

Andrew Vaughan (Corporate Director Commercial and Operations)

SIGNED and Dated: 02/10/2015