

Nottingham City Council Delegated Decision



Reference Number:

3465

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Department:

Commercial and Operations

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Subject:

Public Spaces Protection Orders in respect of dogs

Total Value:

Nil (Type: Nil)

Decision Being Taken:

1. To authorise the Director of Community Protection to publish notification of, and undertake, consultation in respect of 3-year extensions (from 25 September 2019 to 24 September 2022) for each of the following Orders:

- a) Nottingham City Council Dogs on Lead by Direction Public Spaces Protection Order 2016;
- b) Nottingham City Council Dogs Exclusion Public Spaces Protection Order 2016;
- c) Nottingham City Council Dogs on Leads Public Spaces Protection Order 2016;
- d) 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.

Reasons for the Decision(s) On 17 May 2016 Nottingham City Council's Executive Board approved the making of the Orders, which include the following restrictions:

The Nottingham City Council Dogs on Lead by Direction Public Spaces Protection Order 2016

4.(1) A Person in Charge of a dog shall be guilty of an offence if, at any time, on any land in the Restricted Area, he does not comply with a direction given him by an Authorised Officer of the Authority to put and keep the dog on a lead, unless;

a) he has a reasonable excuse for failing to do so; or

b) the owner, occupier or other person or authority having control of the Relevant Land has consented (generally or specifically) to his failing to do so

(2) For the purposes of this Article an Authorised Officer of the Authority may only give a direction under this Order to put and keep a dog on lead if such restraint is reasonably necessary to prevent a nuisance or behaviour by the dog likely to cause annoyance or disturbance to any other person on any Relevant Land, damage to property or the worrying or disturbance of any animal or bird.

The Nottingham City Council Dogs Exclusion Public Spaces Protection Order 2016

4.(1) A Person in Charge of a dog shall be guilty of an offence if, at any time, he takes a dog onto, or permits the dog to enter or to remain on, any land in the Restricted Area, unless;

a) he has a reasonable excuse for doing so; or

b) The owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his doing so

(2) Nothing in this Article applied to a person who -

a) is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948; or

b) is deaf, in respect of a dog trained by registered charity number 293358 (Hearing Dogs for Deaf People) and upon which he relies for assistance; or

c) has a disability which affects his mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects, in respect of a dog trained by a Prescribed Charity and upon which he relies for assistance

The Nottingham City Council Dogs on Leads Public Spaces Protection Order 2016

4.(1) A Person in Charge of a dog shall be guilty of an offence if, at any time, on any land in the Restricted Area he does not keep a dog on a lead unless,

a) he has a reasonable excuse for failing to do so; or

b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so

The 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.

Fouling of Land by Dogs

4.(1) If a dog defecates at any time on land in the Restricted Area and the Person in Charge of the dog at that time fails to remove the faeces from the Relevant Land forthwith, that person shall be guilty of an offence unless

a) he has a reasonable excuse for failing to do so; or

b) the owner, occupier or other person or authority having control of the Relevant Land has consented (generally or specifically) to his failing to do so

(2) For the purposes of this Article -

a) placing the faeces in a receptacle on the land which is provided for the purpose, or for the disposal of waste, shall be a sufficient removal from the land;

b) being unaware of the defecation (whether by reason of not being in the vicinity or otherwise), or not having a device for or other suitable means of removing the faeces shall not be a reasonable excuse for failing to remove the faeces

Failure to produce device for or other suitable means of removing dog faeces on demand

5.A Person in Charge and in the company of a dog in the Restricted Area shall be guilty of an offence if, on the request of an Authorised Officer of the Authority he fails to forthwith produce a device for or other suitable means of removing dog faeces and transporting it to a suitable waste disposal receptacle (whether or not the dog has defecated) unless

a) he has a reasonable excuse for not doing so

Exemptions

Nothing in Articles 4 and 5 of the 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 applies to a person who -

a) is registered as a blind person in a register compiled under Section 29 of the National Assistance Act 1948; or

b) has a disability which affects his mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects, in respect of a dog trained by a Prescribed Charity and upon which he relies for assistance.

Copies of all of the Orders are appended at 1 to 4, with the draft extension attached to the back of each Order respectively.

Public Spaces Protection Orders (PSPOs) can only be granted for a maximum of three years and the Orders detailed above are currently set to expire on 25 September 2019.

Legislation

Under Section 60(2) of the Anti-Social Behaviour, Crime and Policing Act 2014 ('the 2014 Act') PSPOs can be extended for up to three years if, before they are due to expire, the local authority that made the PSPO is satisfied on reasonable grounds that doing so is necessary to prevent -

**a) Occurrence or recurrence after that time of the activities identified in the PSPO,
or**

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

Section 60(3) of the 2014 Act confirms that an extension under Section 60 of the 2014 Act may not be for a period of more than 3 years.

Section 72 of the 2014 Act also applies, which contains provisions relating to convention rights, consultation, publicity and notification requirements.

Under section 72(4) of the 2014 Act the Council must also consult with -

a) The Chief Officer of Police and the local policing body for the public area that includes the restricted area

b) Whatever community representatives the local authority thinks it appropriate to consult with and

c) The Owner or occupier of land within the restricted area.

The Council must also publicise the proposed extension on the Council's website.

If approval to consult is given, it is proposed that Community Protection will publicise the proposals on the Council's website as previously done when the original Orders were proposed.

Relevant representations in relation to whether or not to extend the PSPOs will be invited. Any representations received at the expiry of the consultation period will be reported back to the City Council's Executive Board in July 2019 for a decision to be made on extending the Orders. A consultation period of six weeks is proposed.

Proposed extension to the Orders

It is proposed that consultation commences on 6th May 2019 on the proposals to extend the Orders for a further three years with the consultation concluding on 17th June 2019.

It is considered that the restrictions contained in the Orders which are proposed to be extended are proportionate, necessary and reasonable.

Before the Orders were made in 2016, there were significant problems caused by dog related anti-social behaviour, nuisance and disorder across the whole City of Nottingham. Reports received showed that the problems were 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 showed that these issues impacted greatly on the quality of the 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. It undoubtedly had a detrimental effect on the quality of life of those in the locality.

Evidence gathered in the areas where the Council had implemented Dog Control Orders showed a reduction in dog related nuisance and disorder through the use of associated powers and as such, the Orders were implemented across the Council's administrative area 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 cohesively dealt with effectively.

The powers arising from the Orders are not intended to disrupt peaceful activities, for example families or groups taking their dog out for a walk but 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.

When considering whether to extend a PSPO the Council must have particular regard to rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the Convention

If an extension to the Orders is granted, Community Protection Officers, Police Community Support Officers and Police Officers will remain the 'accredited officers' for the purpose of the Orders.

It continues to be recognised that the most contentious part of the Orders are where they directly impacts on the City's parks. These are important public areas and it is imperative 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'. Authorised Officers are trained to only 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.'

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.

It is proposed that there will be no changes to the Fixed Penalty Notice which is currently set at £100 (with a £50 reduction if paid within 10 days) or a fine of up to £1000 following prosecution.

Evidence has and continues to be collated by Community Protection and Police colleagues. This evidence will be reviewed and considered before being made available to view prior to seeking an extension to the Orders. A copy of all evidence will be made available in the Committee meeting room immediately before the Council's Executive Board meeting in July 2019.

The consultation proposed is for an extension to the Orders. No amendments are to be made other than the extension to the expiry date, extending the Orders to expire on the 24th September 2022.

Briefing notes documents:	Appendix 1a Dogs on Lead by Direction.pdf, Appendix 1b Dogs on Lead by Direction.pdf, Appendix 1c Dogs on Lead by Direction.pdf, Appendix 2 Dogs Exclusion.pdf, Appendix 3 Dogs on Leads.pdf, Appendix 4 Fouling of land and having the means.pdf, Appendix 5 Proposed Timescale.docx, Appendix 6 Notice of Consultation.doc
Other Options Considered:	Not consulting on extending the Orders - REJECTED as the Orders expire on 25 September 2019 and Restrictions contained in the Orders would no longer be available.
Background Papers:	None.
Published Works:	Anti-social Behaviour, Crime and Policing Act 2014; Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014; Home Office - Guidance on the Anti-Social Behaviour, Crime and Police Act 2014 December 2017; Dealing with irresponsible dog ownership Practitioners Manual October 2014; Executive Board report and minutes - 17 May 2016.
Affected Wards:	Citywide
Colleague / Councillor Interests:	None.
Consultations:	Those not consulted are not directly affected by the decision.
Crime and Disorder Implications:	Under Section 60(2) of the Act, PSPOs can be extended for up to three years if, before the Orders are due to expire, the local authority that made the Order is satisfied on reasonable grounds that doing so is necessary to prevent: Occurrence or recurrence after that time of the activities identified in the Order, or An increase in the frequency or seriousness of those activities after that time. Section 67 of the Anti-Social Behaviour, Crime and Policing Act 2014 provides the Police and accredited officers with the power to deal with anti-social behaviour, nuisance and disorder in areas that have been included by the local authority as restricted areas 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.
Equality:	Please login to the system to view the EIA document: New EIA 2018 (2).docx

Decision Type:	Portfolio Holder
Subject to Call In:	Yes
Call In Expiry date:	29/03/2019
Advice Sought:	Legal, Finance, Equality and Diversity
Legal Advice:	<p>Under section 60(2) of the 2014 Act PSPOs can be extended for up to three years if, before the Orders are due to expire, the Council is satisfied on reasonable grounds that doing so is necessary to meet the test in the section, which is set out in the body of the decision. Under section 60(2) of the 2014 Act PSPOs may be extended more than once.</p> <p>Pursuant to section 72 of the 2014 Act before a decision whether or not to extend the Orders can be taken the Council is required to carry out the 'necessary consultation' and 'necessary publicity' as defined in the 2014 Act.</p> <p>The maximum duration of a PSPO is three years, but the Statutory Guidance confirms that they can last for a shorter period where more appropriate. In addition, in deciding whether or not to extend the period for which a PSPO has effect, 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.</p> <p>It is proposed that the consultation shall be on the proposed extension of the Orders for the maximum period of a further three years.</p> <p>Control of dogs and enforcement relating to problems concerning dogs appear to fall within the remit of the Portfolio Holder, and the decision to commence consultation on the proposed extension of the Orders is in accordance with the Council's Scheme of Delegations.</p> <p>The consultation and publication proposed in the body of the decision would appear to comply with the legislative requirements.</p> <p>The consultation proposes an extension to the period that the Orders will have effect only, and therefore, if the consultation is authorised, no other changes to the contents of the Orders will be possible at the end of this consultation.</p> <p>It is noted that, if the consultation is authorised, the results of the consultation and any other evidence gathered in support of the proposed extension of the Orders will then be taken to the Council's Executive Board meeting for a decision on whether or not to extend the Orders in accordance with the Council's Scheme of Delegations.</p> <p>Advice provided by Tamazin Wilson (Solicitor) on 21/03/2019.</p>

Finance Advice:

This decision seeks approval to undertake the consultation processes outlined. The expectation is that the costs can be contained within approved resources. Following the consultation process, any financial implications will be reflected in the refreshed medium term financial plan.

Advice provided by Maria Balchin (Finance Analyst) on 20/03/2019.

Equality and Diversity Advice:

Due regard to equality has been applied in this proposal. There are no further significant issues.

Advice provided by Adisa Djan (Equalities and Diversity Consultant) on 21/03/2019.

Signatures

Toby Neal (Portfolio Holder for Community Protection)

SIGNED and Dated: 22/03/2019

Andy Vaughan (Corporate Director Commercial and Operations)

SIGNED and Dated: 22/03/2019