

EXECUTIVE BOARD – 16th July 2019

Subject:	Extension to Nottingham City Council's Public Spaces Protection Orders in respect of Dogs
Corporate Director(s)/Director(s):	Andy Vaughan, Corporate Director for Commercial and Operations Andrew Errington, Director of Community Protection
Portfolio Holder(s):	Councillor David Mellen, Leader of the Council / Portfolio Holder for Regeneration, Safety and Communication
Report author and contact details:	Melanie Fretwell, Principal Enforcement Officer Melanie.fretwell@nottinghamshire.pnn.police.uk 07904066858
Subject to call-in:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Key Decision:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Criteria for Key Decision:	
(a)	<input type="checkbox"/> Expenditure <input type="checkbox"/> Income <input type="checkbox"/> Savings of £1,000,000 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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Type of expenditure:	<input type="checkbox"/> Revenue <input type="checkbox"/> Capital
Total value of the decision:	Nil
Wards affected:	All Wards
Date of consultation with Portfolio Holder(s):	
Relevant Council Plan Key Theme:	
Strategic Regeneration and Development	<input type="checkbox"/>
Schools	<input type="checkbox"/>
Planning and Housing	<input type="checkbox"/>
Community Services	<input checked="" type="checkbox"/>
Energy, Sustainability and Customer	<input type="checkbox"/>
Jobs, Growth and Transport	<input type="checkbox"/>
Adults, Health and Community Sector	<input type="checkbox"/>
Children, Early Intervention and Early Years	<input type="checkbox"/>
Leisure and Culture	<input type="checkbox"/>
Resources and Neighbourhood Regeneration	<input type="checkbox"/>
Summary of issues (including benefits to citizens/service users):	
<p>Dealing with the issue of dangerous and/or out of control dogs and associated anti-social behaviour continues to be a high priority for Nottingham City Council ("The Council") across its administrative area and this issue regularly receives coverage in the local press.</p> <p>On 17th May 2016, Nottingham City Council's Executive Board approved the making of four Public Spaces Protection Orders ("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 City detailed in Recommendation 1 of this report ("the Dog Control PSPOs"). 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. Unless extended the Dog Control PSPOs will expire on 25 September 2019.</p> <p>This report requests the extension of the Dog Control PSPOs to 24th September 2022.</p>	
Exempt information:	None

Recommendation(s):

1. To authorise extensions to the following Public Spaces Protection Orders (“PSPOs”), having been satisfied that the test in section 59 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 the 25th September 2019,:

(i) Nottingham City Council Dogs on Leads by Direction Public Spaces Protection Order 2016 (“PSPO 1”) Appendix 1

(ii) Nottingham City Council Dogs on Lead Public Spaces Protection Order 2016 (“PSPO 2”) Appendix 2

(iii) Nottingham City Council Dogs Exclusion Public Spaces Protection Order 2016 (“PSPO 3”) Appendix 3

(iv) 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 carry out the necessary advertisements and arrange for appropriate signage to be erected or amended where necessary in accordance with the legislative requirements

1 REASONS FOR RECOMMENDATIONS

1.1 Before the Dog Control PSPOs 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.

1.2 Evidence gathered in the areas where the Council had previously implemented Dog Control Orders showed a reduction in dog related nuisance and disorder through the use of associated powers. Dog Control Orders were repealed under the Anti-social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”) and replaced by PSPOs. As such, the Dog Control PSPOs 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.

1.3 The powers arising from the Dog Control PSPOs 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.

- 1.4 It continues to be recognised that the most contentious part of the Dog Control PSPOs are where they directly impact 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.'
- 1.5 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. The restrictions are reasonable, proportionate and satisfy the Animal Welfare Act 2006 whilst also providing the citizens of Nottingham with additional safety from dangerous and uncontrolled dogs.
- 1.6 There will be no changes to the Fixed Penalty Notice which is currently set at £70 (with a £35 reduction if paid within 10 days) or a fine of up to £1000 following prosecution. Community Protection Officers, Police Community Support Officers and Police Officers will remain the 'accredited officers' for the purpose of the Dog Control PSPOs.
- 1.7 The Council has undertaken consultation in relation to the proposed extension to the expiry date of the Dog Control PSPOs only. Any other potential amendments to the Dog Control PSPOs would require formal consultation, publicity and notification in accordance with the 2014 Act authorised in accordance with the Council's Constitution first before a decision on any such amendment(s) to the Dog Control PSPOs could be taken.
- 1.8 When considering an extension to a PSPO 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 Human Rights Convention. The purpose of the proposed extension to the Dog Control PSPOs is to ensure a continuation of the prevention of those that are causing evidenced ASB and to control their dogs in a responsible fashion. Those going about their business in a peaceful and lawful manner are not be unreasonably affected by the prohibitions in the Dog Control PSPOs.
- 1.9 There are no limitations as to the number of times that the Council can extend PSPOs once made.

2 BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)

- 2.1 On 22nd March 2019, the Portfolio Holder for Communities authorised the formal consultation on the proposals to extend the Dog Control PSPOs. The consultation commenced on 7th May 2019 and ended on 17th June 2019.
- 2.2 Consultation questionnaires were sent to all schools across the Council's administrative area, the Chief Constable for Nottinghamshire Police and a notification regarding the proposed extensions was uploaded to Nottingham City Council's website. At the time of writing no response was received from Nottinghamshire Police however The Council did receive a number of responses from schools within the area.

- 2.3 One school manager wrote in response to the consultation questionnaire asking whether the Council could support his school by producing more signage prohibiting dogs from being brought into the school grounds by parents and guardians when collecting children. He was in full support of a continuation of the Dog Control PSPOs which are currently in force.
- 2.4 Another school manager stated that *“Due to the amount of dog walkers that allow their dogs to roam free on the common land at the back of the school premises. The potential for a dog to bite a child’s finger/hand is high if a child was to put their finger /hand through the fence mesh as the fence is directly on to this land.”* This manager confirmed that they were also in full support of the Dog Control PSPOs being extended for a further three years as they felt this added additional protection for the school children.
- 2.5 Consultation questionnaires were also sent to all Parks User groups, Dogs groups and the consultation questionnaires were forwarded on to any other interested parties. At the time of writing no further responses were received. Any responses received after the report deadline but within the consultation period will be brought to Executive Board’s attention and any advice updated accordingly.
- 2.6 Since the introduction of the Dog Control PSPOs across Nottingham City Council’s administrative area, in the year 2016 to 2017, 206 Fixed Penalty Notices were issued to members of the public for failing to abide by the Orders and a further 1226 Operations were carried out by Community Protection Officers which involved credible intelligence having been received by Community Protection leading to Officers conducting an Operation in the area identified to deal with dogs acting in an anti-social manner. In 2017 to 2018 only 128 Fixed Penalty Notices were issued for failing to abide by the Orders and 933 Operations carried out. This suggests that the Dog Control PSPOs have been somewhat successful in curbing the anti-social behaviour however clearly there is still some way to go. In the year 2018 to 2019, 266 Fixed Penalty Notices were issued and a further 2108 Operations in respect of dogs were carried out which shows a slight increase in dog related anti-social behaviour and therefore there is a real necessity for the Dog Control PSPOs to continue.
- 2.7 After careful consideration of the evidence detailed above and the results of the consultation, it is considered that extending the Dog Control PSPOs is proportionate, necessary and reasonable. It is proposed that the Dog Control PSPOs will be extended for a period of three years and they will have no effect with regards to human rights as the Orders simply require a person to act in a responsible manner when exercising their dog.
- 2.8 There is currently a substantial amount of signage across the City detailing the Dog Control PSPOs installed at prominent places across the administrative area with particular attention paid to areas where dogs are excluded from to ensure that members of the public understand the Orders fully when exercising their dogs. If the Dog Control PSPOs are extended, all the signage across the city currently in place will be updated to reflect the extension.
- 2.9 The Dog Control PSPOs are currently uploaded to the Council’s website and a Notice detailing the extension to the Orders will be uploaded if approval to extend them is granted.

3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

3.1 **Doing Nothing:**

3.2 If the Council decides not to extend the Dog Control PSPOs, they will lapse on 25th September 2019 and the powers associated with these Orders will no longer be available.

3.3 There are no longer alternative existing powers to control various problems associated with dogs in the administrative area of Nottingham as Nottingham City Council's Executive Board approved the revocation of the Order under the Dogs (Fouling of Land) Act 1996 ("the 1996 Act") in May 2016 in order for it to be replaced by the PSPOs.

3.4 The Dog Control Orders under the Clean Neighbourhoods and Environment Act 2005 ("the 2005 Act") were also superseded by the Dog Control PSPOs and are no longer available so for this reason, the option was rejected.

3.5 **Byelaws**

3.6 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.

3.7 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.

3.8 **Other powers**

3.9 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 ("CBOs"), dispersal powers and other dog control legislation for example the Dangerous Dogs Act. Examples of these powers are details in the 'Dealing with irresponsible dog ownership Practitioner's manual' dated October 2014. These powers, other than education, are generally only effective in dealing with specific individuals and incidents, and have been largely ineffective in dealing with the wider issues experienced across Nottingham. Court Orders such as CBOs and Civil Injunctions can be issued, however this approach has also proven costly and time consuming. The Council will continue to be able to use these measures where appropriate but reliance on these powers alone was rejected.

4 **FINANCE COLLEAGUE COMMENTS (INCLUDING IMPLICATIONS AND VALUE FOR MONEY/VAT)**

4.1 The Dog Control PSPOs make it an offence to fail to comply with the restrictions contained in those PSPOs without reasonable excuse. Exemptions are available for disabled owners with assistance dogs in relation to PSPO 4 (dog fouling order) and PSPO 1 (dog exclusion order). Penalties for the offences include a Fixed Penalty Notice being issued, which it is set at £70 (with a reduction to £35 if paid within 10 days), or a fine of up to £1000 following prosecution.

- 4.2 There will be no additional costs for signage as all of the signage is already installed at prominent places across the Council. There may be an additional laminated sticker added to the current signage confirming the extension to the Orders and any associated costs for this laminate will be met by Community Protection.

5 LEGAL AND PROCUREMENT COLLEAGUE COMMENTS (INCLUDING RISK MANAGEMENT ISSUES, AND LEGAL, CRIME AND DISORDER ACT AND PROCUREMENT IMPLICATIONS)

- 5.1 The Council's Constitution states that where an extension to a PSPO, in the opinion of the relevant Director is significant, 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 contain restrictions which apply across significant areas of the Administrative Area of the Council, and the Portfolio Holder for Community Services authorised the formal consultation via a Portfolio Holder Decision. This decision therefore appears to be within the remit of Executive Board.
- 5.2 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.
- 5.3 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).
- 5.4 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 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.
- 5.5 The Council should consider any representations received during the consultation when considering whether to make an extension to the Dog Control PSPOs. The consultation responses are summarised in the Report.
- 5.6 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.
- 5.7 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.

5.8 **Byelaws**

5.9 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 extensions to the Dog Control PSPOs are 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.

5.10 **Crime and Disorder implications**

5.11 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 Dog Control PSPOs provide additional powers to deal with the behaviour identified in the Background to the Decision (above), alongside existing powers and legislation.

5.12 Part 2.5 starting at page 47 of the Government Guidance updated in December 2017 states that the Local Authority will want to satisfy itself that these powers are not being used disproportionately or in an arbitrary fashion.

Advice provided by Tamazin Wilson, Solicitor.

6 **STRATEGIC ASSETS & PROPERTY COLLEAGUE COMMENTS (FOR DECISIONS RELATING TO ALL PROPERTY ASSETS AND ASSOCIATED INFRASTRUCTURE)**

6.1 Not applicable

7 **SOCIAL VALUE CONSIDERATIONS**

7.1 The Public Services (Social Value) Act 2012 places a statutory obligation on the Council when procuring services OR mixed contracts (where services in the main component of the procurement) OR a framework agreement to which the Public Contracts Regulations 2006 apply, to consider at the pre-procurement stage whether what is proposed to be procured might improve the economic, social and environmental well-being of its area and how, in conducting the procurement process, it might act with a view to achieving that objective. In identifying any social value considerations, regard should only be had to social value considerations which are relevant and proportionate to the subject matter of the contract. There is also a statutory requirement also at the pre-procurement stage to consider whether to undertake community consultation on these issues.

8 **REGARD TO THE NHS CONSTITUTION**

8.1 Not applicable

9 **EQUALITY IMPACT ASSESSMENT (EIA)**

9.1 Has the equality impact of the proposals in this report been assessed?

No

An EIA is not required because:
(Please explain why an EIA is not necessary)

Yes

Attached as Appendix 5, and due regard will be given to any implications identified in it.

10 **LIST OF BACKGROUND PAPERS RELIED UPON IN WRITING THIS REPORT (NOT INCLUDING PUBLISHED DOCUMENTS OR CONFIDENTIAL OR EXEMPT INFORMATION)**

10.1 None

11 **PUBLISHED DOCUMENTS REFERRED TO IN THIS REPORT**

11.1 Dealing with irresponsible dog ownership Practitioner's manual' dated October 2014

11.2 Anti-Social Behaviour, Crime and Policing Act 2014

11.3 Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers statutory guidance for frontline professional December 2017 (Home Office)

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

11.5 Environmental Offences (Fixed Penalties) (Miscellaneous Provision) Regulations 2007

11.6 Byelaws:-

- Byelaws for the regulation of dogs at Woodthorpe Park
- Byelaws for the regulation of dogs at Robin Hood Chase
- City of Nottingham (Control of dogs on roads) Order 1957
- Colwick Park Byelaws
- Dogs on Leads for Old Market Square, Nottingham

11.7 Delegated decision 3465 Public Spaces Protection Orders in respect of Dogs, Public Spaces Protection Orders in respect of Dogs, March 2019

11.8 Executive Board report: Nottingham City Council's Public Spaces Protection Orders in respect of dogs. May 2016