

Title of meeting: Cabinet Member for Environment and Community Safety
Date of meeting: 7 November 2018
Subject: Public Spaces Protection Order
Report by: Director Culture and City Development
Wards affected: All
Key decision: No
Full Council decision: No

1. Purpose of report

1.1 To seek approval for the variation of the existing Public Spaces Protection Order ("PSPO") in relation to dog fouling and dog controls.

2. Recommendations

2.1 The Cabinet Member notes the two proposed variations to the existing PSPO in the following terms:

- To exclude dogs on the beach between the Royal Marine statue known as the 'Yomper' and Southsea Castle, between 30th April - 30th September (previously 31st March)
- To exclude dogs on the beach at Hot Walls 30th April - 30th September (previously 31st March).

2.2 The PSPO is varied and approved in the terms shown attached (appendix 1) to continue to assist with the enforcement of dog fouling offences and dog controls.

2.3 The PSPO to be enforced by the Safe, Clean and Tidy team within the Housing, Neighbourhood and Building Services in the same way as for the previous Order. This directorate will be responsible for the administration of all fines and any subsequent prosecutions.

2.4 That costs for any changes to signage notifications and other statutory notices to be from within cash limits.

3. Background

3.1 The Clean Neighbourhoods and Environment Act 2005 (section 51) enabled PCC to introduce a Dog Control Order ("DCO") and it was enacted in Portsmouth in 2011. This legislation enabled PCC to cover all aspects of

owner's responsibility, fouling of land by dogs,, dog exclusion areas and dogs on leads. DCOs could not be amended unless a formal notification was given and full consultation had taken place.

- 3.2 The legislation governing DCOs was repealed and replaced on 20th October 2014 by the Anti-Social Behaviour, Crime and Policing Act 2014, sections 59 to 75. The Anti-social Behaviour Crime and Policing Act 2014 introduced several new tools and powers for local authorities to address anti-social behaviour (ASB) in their areas. These tools replaced and rationalised a number of previous measures, and were brought in as part of a Government commitment to put victims at the centre of approaches to tackling ASB, focussing on the impact behaviour can have on both communities and individuals, particularly the most vulnerable.
- 3.3 The effect of the Act was that existing DCOs could not, after this date, be amended but would continue in force for a 3 year period, until 20th October 2017. After that date, any existing DCOs still in force would automatically become Public Space Protection Orders. Portsmouth's DCO therefore became a PSPO on 17th October 2017. PSPOs can only last for a maximum 3 year period.
- 3.4 Local authorities may use PSPO's to prohibit specified activities and require certain things to be done by people engaged in particular activities within a defined area. PSPO's differ from other tools under the Act as they are council led and rather than targeting specific individuals or properties, they focus on the identified problem behaviour in a specific location.
- 3.5 The previous DCO is considered to have been successful with most people accepting the controls put in place and where these were ignored appropriate Fixed Penalty Notices ('FPNs') were issued.
- 3.6 The City Council intends to retain the successful controls contained within the current PSPO but introduce two changes, these being:
- To exclude dogs on the beach between the Royal Marine statue known as the 'Yomper' and Southsea Castle, between 30th April - 30th September (previously 31st March)
 - To exclude dogs on the beach at Hot Walls 30th April - 30th September (previously 31st March).

4. Reasons for recommendations

- 4.1 The existing PSPO will only remain in force up to a maximum of three years (2020) from the point of transition. There was no requirement under the legislation for local authorities to undertake a new consultation process for this transitional period.
- 4.2 Since the introduction of the original DCO, there have been various campaigns to extend the period when dogs may be exercised on two specific beaches,

including a 1,000 named petition. This varied PSPO will enable this change to be made.

- 4.3 The PSPO will be subject to a regular review as the maximum duration is of up to three years after which it may be extended if certain criteria under section 60 of the Act are met. This includes consideration of whether an extension is necessary to prevent activity from reoccurring or there has been an increase in frequency or seriousness of the activity. Extensions can be repeated, with each lasting for a maximum of three years. Effective evaluation of Orders will be important when determining whether extension or variations would be appropriate.
- 4.4 The powers / restrictions imposed by the proposed PSPO would not apply to those who are registered blind or use an Assistance Dog from Dogs for the Disabled, Support Dogs and Canine Partners for Independence or Hearing Dogs.

5. The legislation and consultation

- 5.1 Prior to making a PSPO the Council must be satisfied (under s.59) on reasonable grounds that:
- (a) activities carried out in a public place within the City are having a detrimental effect on the quality of life of those in the locality or it is likely that activities will be carried on in a public place within the City and that they will have such an effect; and
 - (b) the effect, or likely effect, of the activities is likely to be of a persistent or continuing nature or is likely to be such as to make the activities unreasonable and therefore justifies the restrictions.
- 5.2 Council enforcement officers have been issuing FPNs for dog fouling for many years under the terms of the previous DCO and current PSPO. Dog fouling has and is likely to continue to have a detrimental effect on the quality of life of people in the City and it is in the interests of the Council, for the benefit of the public, to continue to enforce responsible dog ownership. This information together with the consultation response indicate that there are reasonable grounds to be satisfied that the activities which the Council are seeking to restrict in the PSPO have a detrimental effect on the quality of life of people in the locality and the effect, or likely effect of the activities is likely to be persistent, unreasonable and therefore justifies the restrictions proposed.
- 5.3 It is a requirement of the Act that consultation takes place before a PSPO is varied. Consultation has taken took place with the following groups:
- General Public with a neighbourhood survey (appendix 2)
 - Cabinet Member for the Environment and Community Safety and the Cabinet Member for Culture, Leisure and Sport by discussion at weekly Cabinet Member meetings

- A letter was sent to the Police and Crime Commissioner and followed up with a further letter 4 weeks later and phone call and there were no adverse comment (appendix 3)
- A letter was written to The Kennel Club and followed up with a further letter after 4 weeks and no reply was received. A telephone call was made and the response was that if they had any objections they would have responded in writing(appendix 4)
- In addition, it should be noted that a 1,000 name petition in support of the two changes was submitted to the Council in 2016.

There were no objections received from the consultees.

5.4 In order to make the decision, the Cabinet Member has to be satisfied that the need to provide safe places to exercise dogs has been balanced against the interests of those who may be affected by the activities of dogs.

6. Timetable for implementing this decision

6.1 If the Cabinet Member decides to proceed with a PSPO in the terms attached, the Order will be published on the Council's website and implemented 28 days later. Suitable signage will also be erected and the PSPO will be kept under review to ensure it is still necessary.

7. Equality impact assessment

7.1 A preliminary equality impact assessment has been completed and the recommendation does not have a negative impact on any of the protected characteristics as described in the Equality Act 2010 for the following reasons:

- The existing dog control order was converted to a Public spaces protection order in 2017 by statute
- The effect of the two changes mean that dogs will be able to be exercised on the beach for a month later than was originally permitted
- The only protected characteristics that could potentially impact on is disabled people with an assistance or guide dog but they are exempt from the terms of the PSPO.

8. Legal implications

8.1 The Anti-Social Behaviour, Crime and Policing Act 2014 (sections 59 to 75) set out the requirements for a PSPO to be made (as set out in 5.1 above) and the procedures for consultation, publicity and notification of orders before a PSPO is made. The prohibitions imposed must be ones that are reasonable to impose in order to prevent the detrimental effect from continuing, occurring or recurring or to reduce the detrimental effect or reduce the risk of its continuance, occurrence or recurrence. Consultation includes consulting the chief officer of police and the local policing body, any community representatives the LA thinks

it appropriate to consult and the owner or occupier of land within restricted areas. In addition, consultation should be undertaken with dog law and welfare organisations.

- 8.2 The Cabinet Member must consider the results of the consultation and the evidence in support of making the PSPO in the terms attached.
- 8.3 Following the making of an order by the LA, an interested person may appeal to the High Court to question the validity of a PSPO, or a variation of an Order. An appeal must be made within the period of 6 weeks beginning with the date on which the Order or variation is made. An interested person is someone who lives in, regularly works in or visits the area in question.
- 8.4 The enforcement of breaches of the PSPO will continually to be initially enforced through the use of a simple fine under a fixed penalty notice in most cases and then to criminal prosecution in the Magistrates' Court if not paid.
- 8.5 The Cabinet Member has the power to make the recommendations contained within this report.

9. Director of Finance's comments

- 9.1 The management of the PSPO will continue to be met from within existing budget resources.

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Signed by:
Stephen Baily
Director of Culture and City Development

Appendices:

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
Appendix 1 draft PSPO	Attached
Appendix 2 public consultation	Attached
Appendix 3 P&CC letter	Attached
Appendix 4 Kennel Club letter	Attached
Drawing 1 fouling of land control map	Attached
Drawing 2 city wide dog controls	Attached

The recommendation(s) set out above were approved/ approved as amended/ deferred/
rejected by on

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Signed by:
Councillor Dave Ashmore
Cabinet Member for Environment & Community Safety