

Item No. 9.	Classification: Open	Date: 21 March 2017	Meeting Name: Cabinet
Report title:		Approval to go out to Public Consultation for the Introduction of Public Space Protection Orders (PSPOs) to Tackle Dog Related Anti-Social Behaviour (ASB)	
Ward(s) or groups affected:		All wards	
Cabinet Member:		Councillor Barrie Hargrove, Communities and Safety	

FOREWORD - COUNCILLOR BARRIE HARGROVE, CABINET MEMBER FOR COMMUNITIES AND SAFETY

Southwark Council is committed to providing services that create a cleaner, greener, safer borough for all. Southwark has continued to invest in services to keep our streets clean and worked hard to create parks and open spaces we can be proud of, receiving the second highest Green Flag awards (25) in the UK.

Most of our residents behave responsibly, however, there are still concerns raised by local residents with regards to dog related anti-social behaviour (ASB) and irresponsible dog ownership. Dog related ASB is currently dealt with borough-wide through byelaws which can be enforced through prosecution only.

In order for us to meet our Cleaner, Greener, Safer commitment to 'Encourage People to keep Southwark clean and use enforcement powers proportionately, where people litter or do not clean up after their dogs', it is necessary to re-evaluate our powers for dealing with dog related ASB and improve on these where possible.

The introduction of a Public Space Protection Order (PSPO) for dog related ASB would improve officers enforcement capability, providing powers for them to issue fixed penalty notices to those dog owners who behave irresponsibly and prosecute those owners who persistently offend.

If a PSPO is not implemented for dog related ASB (including not picking up after their dogs), authorised officers will be unable to issue fixed penalty notices to those dog owners who behave irresponsibly.

As cabinet member for communities and safety I am asking that cabinet, after consideration, approve the recommendations as set out in this report.

RECOMMENDATIONS

1. That cabinet approves the recommendation to begin public consultation with the intention to gain public view on the introduction of PSPOs to tackle dog related Anti-social behavior, as prescribed under The Anti-Social Behavior (ASB) Crime and Policing Act 2014.

2. That cabinet notes that the consultation will be for a period of six weeks and will seek public view on the following proposed PSPO provisions:-

Proposed PSPO provision	Proposed Area
Dog faeces must be cleaned up by those responsible for their dog(s)	Borough Wide
Dogs must be put on lead when instructed to do so by and authorised officer	Borough Wide
Dogs must be kept on a lead or Dog Exclusion Areas	Nunhead Cemetery Camberwell Old Cemetery Camberwell New Cemetery
Dog exclusion areas	Children's Play areas within Parks and Open Spaces Children's play areas within housing estates
A maximum number of dogs with one handler (four maximum)	One Tree Hill (Replacing current Dog Control Order provision)

BACKGROUND INFORMATION

3. Dog related ASB still remains a concern for Southwark residents, being the greatest source of complaint from communities received by the community wardens' service. Concerns range from dog faeces not being picked up by dog owners, dogs being out of control and dog attacks on both residents and animals.
4. There have been increasing concerns raised by local residents with regards to dog related Anti-social behavior within Southwark's Cemeteries and Crematoria.
5. Between October 2015 to September 2016 there have been the following reports with regards to dog related crime and ASB:
- 5 dog attacks against members of the public
 - 1 incident of a dog attacking a member of staff
 - 6 incidents of dogs attacking other dogs
 - 1 incident of a cat being killed by a dog
 - 136 incidents of offences against park byelaws of dogs of leads in 'dogs on lead areas' and dogs within 'dogs prohibited areas', reported by community wardens
 - 42 incidents of dog related ASB, reported by community wardens
 - 12,686 incidents of dog mess have been removed by hand by Southwark's contracted staff within Parks and surrounding areas
 - 9,120kg has picked up by Southwark's FIDO (dog mess clearing vehicle)

- 475 incidents of dog mess have been recorded through to the call centre or via the online reporting form for clearance.
6. Southwark Council's current provision for dealing with dog related ASB is mainly through byelaws, breach of which can only be dealt with via warning and prosecution but not by fixed penalty notices.

Public health concern

7. Toxocariasis is a rare infection caused by roundworm parasites. It's spread from animals to humans through contact with infected faeces. Roundworm parasites are most commonly found in cats, dogs and foxes, and usually affect young children. This is because children are more likely to come into contact with contaminated soil when they play and put their hands in their mouths. However, cases have been reported in people of all ages.

Public Space Protection Orders (PSPOs)

8. The ASB Crime and Policing Act 2014 was introduced to provide simpler, more effective powers to tackle ASB providing better protection for victims and communities.
9. PSPOs were introduced under the ASB Crime and Policing Act 2014, giving provisions to deal with a particular nuisance or problem in a particular area that is detrimental to the local community's quality of life by imposing conditions on the use of that area that apply to everyone.
10. A local authority may make a public spaces protection order if satisfied on reasonable grounds that two conditions are met.

The first condition is that:

- activities carried on in a public place within the authority's area 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 a public place within that area and that they will have such an effect.

The second condition is that the effect, or likely effect, of the activities:

- is, or is likely to be, of a persistent or continuing nature
- is, or is likely to be, such as to make the activities unreasonable, and
- justifies the restrictions imposed by the notice.

Implementation of a PSPO

11. Once a local authority is satisfied that the conditions for introducing a PSPO (as above) have been met then it must carry out the necessary consultation before introducing a PSPO. Necessary consultation means consulting with:
- Mayor's Office for Policing and Crime
 - the chief officer 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
12. Appendix 1 outlines the draft public consultation document.
 13. Appendix 2 outlines the draft consultation plan which demonstrates that the 'necessary consultation' requirements would be met.
 14. Introducing a PSPO to tackle dog related ASB meets the conditions as set out by the PSPO legislation in that:
 - Dog related ASB has a detrimental effect on the quality of life on those in the locality. Any dog related ASB is considered unreasonable and justifies the restrictions proposed.
 - Irresponsible dog ownership and dog related ASB has and can have a detrimental effect on others within the community.

KEY ISSUES FOR CONSIDERATION

15. Southwark is committed to creating a Cleaner, Greener, Safer Borough for residents, businesses and visitors and has a council plan commitment (CGS4) to 'Encourage People to keep Southwark clean and use enforcement powers where people litter or do not clean up after their dogs.
16. Southwark Council has no borough wide provision to issue fixed penalty notices specifically to those who do not pick up after their dogs.
17. Southwark Council has no borough wide provision to issue fixed penalty notices specifically to those who breach byelaws in parks and open spaces for dog prohibited areas and dogs on leads areas.
18. Southwark Council has no borough wide provision to issue fixed penalty notices specifically to those who breach the Local Authorities' Cemeteries Order 1977 within its cemeteries and crematoria for dog related ASB.
19. A recent survey of restrictions on dog owners within cemeteries and crematoria across 33 London boroughs highlighted that only four boroughs (including southwark) allowed professional dog walkers into their grounds. The survey also highlighted that just over half of all London boroughs required dogs to be on leads in cemeteries at all times.
20. Residents have reported being attacked and frightened by 'packs of dogs', dogs knocking over children, disrupting funeral services and attacks on animals within Southwark's cemeteries and parks and open spaces.
21. Southwark Council has two areas (One Tree Hill and Aylesbury Estate) designated as Dog Control Order (DCO) Areas, introduced under the Clean Neighbourhoods and Environment Act 2005. The DCO areas will automatically become a PSPO within three years of the Anti-Social Behaviour Crime and Policing Act 2015 coming into force, unless incorporated into any PSPO for dog related ASB that is introduced before this time.

22. The DCO in One Tree Hill prescribes:
- Dog faeces must be cleaned up by those responsible for the dog/s
 - A maximum number of dogs with one handler (four maximum).
23. The DCO for the Aylesbury Estate prescribes:
- Dog faeces must be cleaned up by those responsible for the dog(s)
 - Dogs must be kept on leads.
24. It is proposed that any PSPO for dog related ASB introduced covers the provisions as set out in One Tree Hill DCO.
25. It is proposed that the provision for picking up after your dog within the Aylesbury Estate is covered within any PSPO introduced to tackle dog related ASB. The DCO provision for 'Dogs must be kept on leads' was introduced due to community and officer concerns of dogs being dangerously out of control on the estate. Dogs being dangerously out of control is no longer a concern for officers and residents and therefore it is proposed that the provision for keeping dogs on a lead on the Aylesbury Estate is not provided for within any PSPO for dog related ASB, but will be covered by PSPO provisions for 'dogs to be on placed on leads when instructed to do so by an authorised officer' and 'dog exclusion areas' within any children's play areas on the estate.
26. Any PSPO for dog related ASB introduced will repeal any similar provision held within byelaws for the duration of the PSPO.
27. The Secretary of State stipulates that any local authority introducing a PSPO must:
- (a) publish the order as made, extended or varied (as the case may be) on its website; and
 - (b) to be erected on or adjacent to the public place to which the order relates such notice (or notices) as it considers sufficient to draw the attention of any member of the public using that place to-
 - (i) the fact that the order has been made, extended or varied (as the case may be); and
 - (ii) the effect of that order being made, extended or varied (as the case may be).
28. Breach of a PSPO is a criminal offence subject to up to a level 3 fine on prosecution, which is a maximum of £1,000.
29. A breach occurs when a person without reasonable excuse:
- does anything that the person is prohibited from doing by a PSPO
 - fails to comply with a requirement of a PSPO.
30. A Fixed Penalty Notice (FPN) can be issued, which discharges liability to conviction for the offence, unless unpaid. The FPN can be issued by a police officer or council officer up to a maximum value of £100.

31. Table 1 - Key activities and associated timescales for implementation of PSPO for dog related ASB.

Activity	Timescale
Approval by cabinet to go out to consultation.	March 2017
Six week consultation as set out in the consultation plan.	April/May 2017
Evaluation of public consultation responses	May 2017
Cabinet report seeking approval of any PSPOs in line with public consultation.	July 2017
Production of appropriate signage, training of authorised officers and printing of fixed penalty notice documents.	August 2017
Implementation of PSPO for dog related ASB including education	Sept 2017

Policy implications

32. Southwark aims to deliver the very best services so the borough is clean, green and a safe place to be. Implementation of any PSPO for dog related ASB will support service delivery in this area and aid officers to deliver against the council commitment (CGS4) to 'Encourage People to keep Southwark clean and use enforcement powers where people litter or do not clean up after their dogs.
33. In 2016 Southwark Council adopted the Animal Welfare Charter which outlines its commitment to promoting animal wellbeing and providing information and guidance on animal care and legal responsibilities.
34. Any introduction to a PSPO to tackle dog related ASB will involve an education on the provisions as well as responsible dog ownership. This will support Southwark's delivery against the Animal Welfare Charter.
- Introduction of any PSPO provision to tackle dog related ASB will not impact negatively on the Animal Welfare Charter and encourage responsible dog ownership which is highlighted as a requirement under the charter for dog owners who are council tenants.

Community impact statement

35. To ensure compliance with requirements as set out in the Public Sector Equality Duty (PSED), a full equality and health analysis will be undertaken on completion of the public consultation, forming part of any future cabinet report seeking approval to introduce PSPOs for dog related ASB within the borough.
36. Initial consideration has been given on the impact of the proposed PSPO restrictions and requirements outlined in this report on the "protected characteristics" groups as set out in the Equalities Act 2010. It is envisaged that dog related ASB negatively impacts on the disabled "protected characteristics" group, specifically those with visual impairment. As such any person who is disabled and in charge of an assistance dog will be exempt from any PSPO provision requiring them to pick up after their dog.
37. The consultation will seek to be inclusive and will seek views from those who may be affected by the introduction of any PSPOs for dog related ASB. This includes identified dog walkers, professional dog walkers, 'friends of' groups, animal welfare organisations.

Resource implications

Finance

38. The cost for to go out to consultation will mainly be through online forms and paper copies of the consultation surveys placed in libraries and parks offices. The cost for this is envisaged to be minimal and will be delivered within the existing budget of Regulatory Services.
39. The majority of costs for implementing any PSPO within the borough will be from the erection of signage. Initial survey work with regards to signage is that the estimated costs will be around £20,000. This cost will be met within the existing budget of Regulatory Services with the Environment & Leisure Department.

Staffing

40. Resource implications for the delivery of public consultation, education and enforcement of any PSPO will be met within the current staffing resources across Environment and Leisure and Housing departments.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

41. Section 59 of the ASB, Crime and Policing Act 2014 ('the 2014 Act') provides a power for local authorities to designate a Public Spaces Protection Order ("PSPO"). A PSPO is designed to tackle a range of activities which have a detrimental effect on a local community's quality of life and may in respect of a specified area, either prohibit specified things being done in that location and/or require specified things to be done by persons carrying on specified activities in that place. Once made, a PSPO empowers a Constable (or other authorised persons as defined in the 2014 Act) ("Officers") to enforce a prohibition or requirement set out in the PSPO.
42. Anyone breaching the terms of this Order without reasonable excuse commits an offence punishable by a fine set at level 3 on the standard scale (currently £1000). Officers may issue an offender with a Fixed Penalty Notice (FPN) in lieu of prosecution, in which case payment of the FPN would discharge the offender from any criminal liability.
43. Before a PSPO can be made Members must be satisfied (on reasonable grounds) that the following two conditions are met:
 - i. That the activities carried on in a public place within the authority's area (namely the supply and use of legal highs) have had a detrimental effect on the quality of life of those in the locality, or that it is likely that these activities will be carried on in a public place within that area and that they will have such an effect.
 - ii. That the effect, or the likely effect, of the activities is (or is likely to be) of a persistent or continuing nature and which is such as to make the activities unreasonable and that this justifies the restrictions set out in the PSPO. Members must be satisfied that they are reasonable to impose in order to

prevent the detrimental effect on those in the locality or reduce the likelihood of the detrimental effect continuing, occurring or recurring.

44. Following consultation, if Members are satisfied that all of the above conditions are made out then subject to the procedure being followed to implement a PSPO, a PSPO can be put into effect following authorisation. Once authorised, the ASB, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014, sets out the manner in which a PSPO must be publicised and requires that once the Order is made it:

- a. the order must be published on the council website; and
- b. cause to be erected on or adjacent to the public place to which the order relates such notice (or notices) as it considers sufficient to draw the attention of any member of the public using that place to:
 - publicise the fact that the order has been made; and,
 - the effect of that order being made.

45. Further guidance in relation to the making of a PSPO is set out in the Home Office Guidance Document (ASB, Crime and Policing Act 2014: reform of ASB powers) July 2014

46. A challenge to a PSPO can be made in the High Court within 6-weeks of the PSPO being made only by those interested persons directly affected by the restrictions on the on the following grounds:

- i. the local authority did not have the power to make the order, or to include particular prohibitions or requirements; and,
- ii. the local authority did not fulfil its requirements in making the order (i.e. no consultation).

47. Pending the outcome of the appeal, the High Court can suspend the PSPO in whole or part.

48. Section 149 of the Equality Act 2010 sets out the public sector equality duty replacing the previous duties in relation to race, sex and disability and extending the duty to all the protected characteristics i.e. race, sex, disability, age, sexual orientation, religion or belief, pregnancy or maternity, marriage or civil partnership and gender reassignment.

49. The public sector equality duty requires public authorities to have due regard to the need to:

Eliminate unlawful discrimination, harassment and victimisation:

- Advance equality of opportunity
- Foster good relations between those who share a protected; and, characteristic and those who do not.

50. Part of the duty is to have “due regard” where there is disproportionate impact will be to take steps to mitigate the impact and the Council must demonstrate that this has been done, and/or justify the decision, on the basis that it is a proportionate means of achieving a legitimate aim. Accordingly, there is an expectation that a decision maker will explore other means which have less of a

disproportionate impact. The equality duty must be complied with before and at the time that a particular policy is under consideration or decision is taken – that is, in the development of policy options, and in making a final decision. A public body cannot satisfy the equality duty by justifying a decision after it has been taken. An impact assessment will need to be carried out following consultation.

Strategic Director of Finance and Governance (FC16/041)

51. This report is requesting cabinet to approve the recommendation to begin public consultation with the intention to gain public view on the introduction of Public Space Protection Orders to tackle dog related Anti-social behavior, as prescribed under The Anti Social Behaviour Crime and Policing Act 2014. The consultation will be for a period of six weeks and will seek public view on the proposed PSPO as outlined in paragraph 2. Full details and background is provided within the report.
52. The strategic director of finance and governance notes that the cost of the consultation and any subsequent implementation of the PSPO will be contained within existing budgets.
53. Staffing and any other costs connected with this recommendation to be contained within existing departmental revenue budgets.

BACKGROUND DOCUMENTS

No.	Title
None	

APPENDICES

No.	Title
Appendix 1	PSPO for dog related ASB Questionnaire
Appendix 2	PSPO draft consultation plan

AUDIT TRAIL

Cabinet Member	Councillor Barrie Hargrove, Communities and Safety		
Lead Officer	Deborah Collins, Strategic Director of Environment & Leisure		
Report Author	Tracy Umney, CCTVG & DABS Unit Manager, Environment and Leisure		
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Key Decision?	Yes		
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER			
Officer Title		Comments Sought	Comments Included
Director of Law and Democracy		Yes	Yes
Strategic Director of Finance and Governance		Yes	Yes
Cabinet Member		Yes	Yes
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