

SPECIAL ENVIRONMENT OVERVIEW & SCRUTINY COMMITTEE**15 JANUARY 2019**

REPORT TITLE	Proposed Dog Control Public Spaces Protection Order
REPORT OF	Mike Cockburn Lead Commissioner – Environment Strategy & Partnerships

REPORT SUMMARY

The proposed dog control measures have been developed in response to extensive resident feedback expressing concern at the levels of dog fouling and dog nuisance in Wirral. It is clear that this feedback is related to a small minority of dog owners and is by no means a reflection of the behaviour of many thousands of dog owners in the borough.

The Ipsos Mori Residents Survey in 2017 found once again that dog fouling was a major concern among residents. The Residents Survey analysis report said:

“We know that the appearance of the borough is very important to Wirral residents. Area cleanliness is a key driver to local area satisfaction and also of the Council representing value for money, so it is important to understand what shapes perceptions of litter issues. Dog fouling comes out as the top issue across the board, with all constituencies bar Wirral West naming it as the top issue in their area.” Ipsos Mori, 2017.

Members of all parties will also be aware that this is an issue which prompts hundreds of complaints from residents every year, either direct to the Council, on social media, through the local press or through Member surgeries and community outreach. These proposals are a key part of our response to this feedback, and a genuine effort to keep defined areas of Wirral’s parks, beaches and open spaces completely free of dog fouling and dog nuisance.

It is proposed that Cabinet be requested to approve the establishment of the Wirral dog control public spaces protection order and measures for a period of 3 years from 1 April 2019, as set out in **Appendix 1** and to instruct officers to make arrangements for the dog control public spaces protection order to be enforced through the provisions of the Environmental Enforcement Contract.

This matter affects all Wards within the Borough.

The decision will be a ‘key decision.’

RECOMMENDATION

Committee is recommended to:

Consider proposals for the Dog Control Public Spaces Protection Order and provide comments to the Cabinet Member – Environment.

SUPPORTING INFORMATION

1.0 REASONS FOR THE PROPOSED MEASURES

The evidence base compiled and the outcomes of the recent public and stakeholder consultation exercise highlight that there is a need in Wirral to address irresponsible dog ownership and levels of dog nuisance and aggression. The Council has identified that a dog control PSPO will provide a framework to address irresponsible dog ownership and the nuisance caused by dogs, leading to an improved experience of Wirral's open spaces for all.

Establishing the dog control PSPO, as set out in this report, will benefit Wirral's local communities and help support safe and healthy neighbourhoods, through:

- Increasing responsible dog ownership and the promotion of excellent dog care and control.
- Creating high levels of enjoyment and user experience of Wirral's open space environment for all users.
- Providing a safe environment for all users of Wirral's open spaces, including dog owners and their pets.

2.0 OTHER OPTIONS CONSIDERED

The Council has previously put in place a range of measures and initiatives to address dog control and nuisance issues such as dog fouling, these have included public awareness campaigns on dog fouling and the 'We're Watching You' social experiment exercise. However, despite these campaigns and the deterrent of dog fouling enforcement in operation for the past 2 years, some dog owners have continued to behave irresponsibly and not pick up after their dog fouling, thus adversely affecting the local environment.

The number of reported dog attacks in Wirral has increased in recent years. There were 23 attacks in 2012 but this rose to 170 attacks in 2017. Last year's figure is projected to be exceeded this year, with 18 attacks occurring in the 3 months between April and July. Therefore, the option of no change and continuing with the same interventions and initiatives would not enable the Council and its partners to reduce dog attacks, or effectively address anti-social behaviour caused by irresponsible dog ownership.

The Council considered a range of options and proposals for future dog control measures and included these in the public consultation exercise. Subsequently, a number of the proposed measures have been removed for a number of reasons from the recommended dog control PSPO.

3.0 BACKGROUND INFORMATION

3.1 Overview of use of PSPOs for dog control

Public Space Protection Orders (PSPOs) are being used by many local authorities across England to tackle local anti-social issues. The measures contained in the Council's proposed dog control PSPO are not unusual or the first of their kind. Numerous examples exist nationwide of PSPOs being established by local authorities to tackle dog related issues. There are also examples of local authorities, such as Daventry District Council, seeking to

renew their PSPOs following perceived impact and public support in addressing anti-social behaviour and dog control issues.

Within the Liverpool City Region, Sefton Council and Knowsley Council introduced dog control PSPOs in the last year following consultation exercises. The approach taken by both authorities was to gather evidence to justify 'blanket cross borough measures' for all facilities such as marked sports pitches, tennis courts and bowling greens.

There is limited case law against PSPOs; however London Borough of Richmond was successfully challenged in the High Court in April this year due to insufficient evidence and disproportionate dog control measures established.

3.2 Dog Control

The evidence base compiled demonstrates that there have been concerning levels of reported incidents of dog attacks and acts of dog aggression on people and other dogs across Wirral for a number of years. **The evidence base was published in full in July via the Council's website and can be viewed using the following link to the [supporting information](#).**

Evidence compiled includes Merseyside Police figures for reported dog attacks, Wirral Council's own record of reported dog incidents, reported dog attacks on guide dogs and impact statements that provide further details of dog attacks/aggression from a range of professionals, including the Council's Head of Environmental Health, Dog Welfare Officer and a number of Parks and Countryside staff members, who encounter such issues on a regular basis when conducting their duties in the borough's parks and playing fields.

The control measures proposed will enable the Council to set out clear expectations for the control of dogs. It is the Council's view that improved control of dogs through the measures of the PSPO will reduce the number of dog attacks and improve people's feeling of safety and confidence when using Wirral's open spaces. The controls will enable enforcement officers to request that a dog observed acting aggressively or causing a nuisance is put on an appropriate lead immediately. Failure to do this using an appropriate lead will be an offence.

The evidence base has also identified a number of locations and facilities situated across the borough, where incidents of dog nuisance and fouling have taken place despite the type of activity and provision requiring a dog-free environment. Such facilities include a number of marked sports pitches during the defined playing season and children's play areas. The Council has reviewed each marked sports pitch location to identify those suffering from incidents of dog nuisance and fouling to identify sites for inclusion in the PSPO.

3.3 Dog Fouling

Evidence suggests that Wirral residents feel strongly that dog fouling is a blight on their local environment and something that affects their quality of life. Tackling dog fouling is something that residents want to see happen as highlighted in the Council's resident's survey of 2017 (62% of residents believe that dog fouling is a problem in their local area).

The evidence base was published in full in July via the Council's website and can be viewed using the following link to the [supporting information](#).

Concern about dog fouling and its effect in the community appears to have strengthened over recent years, with more people stating dog fouling is a problem than the position in 2015 (54% in 2015) through the Council's first resident' survey. This is despite the Council enhancing and increasing enforcement action against dog owners who fail to pick up after their dog, by including it in the first Environmental Enforcement Contract via variation in 2016. Since dog fouling enforcement became part of the Environmental Enforcement Contract, over 500 fixed penalty notices have been issued across the borough for dog fouling offences.

3.4 Proposed Scope of Dog Control PSPO

It is proposed that the dog control PSPO will be made up of a number of dog control measures, some of which relate to existing offences and by-laws, whilst others will be new measures of dog control. Such controls have been proposed in response to data and information relating to dog-related incidents. Such incidents have caused hurt, damage and distress to residents, visitors, children, dog owners and their pets, including assistance dogs performing their duty. It is Wirral Council's position that the establishment of an effective dog control PSPO will reduce the number of such incidents and related anti-social behaviour in the future and enhance people's enjoyment of Wirral's open spaces through transformed dog ownership and control.

Following the conclusion of the consultation exercise in July, it was decided to withdraw seasonal dog free zones on the five identified beaches, due to the strong response against the measures within the consultation exercise. The Council promoted this withdrawal through local media and through a video message from the Cabinet Member for Environment on the Council's website.

Following a full review of the PSPO evidence base and the outcomes of the consultation exercise, it is proposed that the following measures **will be contained** within the PSPO (as set out in the document in **Appendix 1**):

- The fouling of land by dogs.
- Means of disposal on a person if observed not picking up their dog's fouling.
- Number of dogs walked by an individual.
- The exclusion of dogs from listed land locations.
- Dogs on leads at all times at listed locations.
- Dogs on lead by direction.

The following proposed measures **will not be included** within the PSPO:

- Seasonal dog free zones on the five listed beaches.
- Dogs on leads at all times in public areas of allotments sites

The locations across Wirral where the dog control PSPO's measures will be specifically applied are set out in spreadsheet in **Appendix 2** of this report.

3.5 Borough Wide Application of the Dog Control PSPO

It is proposed that the dog control PSPO will apply to all public land within the geographical boundary of the Metropolitan Borough of Wirral and private land (by agreement with the land owner). The borough-wide application of the dog control PSPO and some of the measures such as dog fouling and dogs on lead by instruction, has been determined through analysis

of data and information relating to incidents across Wirral of dog violence, threatening and anti-social behaviour by dogs, nuisance and disturbance caused by lack of dog control and the unthoughtful actions of a minority of dog owners in not picking up their dog's fouling. For marked sports pitches, a location by location review exercise was undertaken to identify the 12 locations where the dog exclusion measure will be applied during the specified season. These locations were identified using an evidence threshold of at least 4 instances of reported dog nuisance, dog fouling or dog fouling enforcement occurring on site within the previous 2 years (from the start of the consultation exercise in June 2018). The review exercise included identifying the nearest alternative dog walking locations from those where the exclusion measure will apply on marked sports pitches with limited on site unrestricted dog walking space.

It is proposed that the dog control PSPO will be in place and enforced for three years from the date of implementation. The three year period for the PSPO's duration is required to fit with the Council's long term objective of driving behaviour change in the way people relate to their local environment and dog ownership and control. The Council acknowledges that behaviour change is a long term project and that the deterrent of active enforcement must be applied for some years in order to see demonstrable change, including more responsible dog ownership, through deployment of the PSPO's measures.

4.0 FINANCIAL IMPLICATIONS

4.1 Operational Costs

The implementation and coordination of the dog control PSPO will be met within existing resources from a number of service areas. The communications and promotions campaign that will be delivered prior to and following the PSPO's implementation will utilise the Love Wirral branding and funding.

There will be no costs incurred by the Council for the provision of enforcing the measures of the dog control PSPO as set out in the Environmental Enforcement Contract, other than for the officer time taken to liaise with the contractor and manage the contract. The Council will incur the cost of initial training the enforcement contractor's officers will receive on dog behaviour and equalities issues.

4.2 Capital Funding

The dog control PSPO will require the support of a signage scheme to be installed at each of the locations that are subject to the PSPO's measures. It is proposed that the signage scheme will be supplemented by notices and public information to enhance public understanding of the PSPO and alternative locations for unrestricted dog walking. It is proposed that the signage scheme and supporting notice boards will be funded through the Council's approved capital programme. An indicative cost of £50,000 has been identified for the scheme; however this is prior to tender for supply and subject to the PSPO measures decided upon.

5.0 LEGAL IMPLICATIONS

5.1 What is a Public Space Protection Order?

A PSPO is a local authority power introduced by the Anti-Social Behaviour, Crime and Policing Act 2014. A PSPO can be made if, on reasonable grounds, the local authority is satisfied that 2 conditions are met. The first condition is that:

- a) 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
- b) 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:

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

PSPOs can last for up to three years once approved. An existing PSPO can be varied and it can be extended more than once. Orders can be enforced by council officers and delegated third party partners, police officers and police community support officers through delegated authority. A breach of the order is a criminal offence and can be dealt with through the issuing of a Fixed Penalty Notice (FPN) to discharge the offender's liability for the offence or a fine of up to £1000 on prosecution.

5.2 What powers does the Council have at present?

Existing powers to deal with dog control include tackling offenders who allow their dogs to foul and not remove their dog's fouling straight away by issuing a £50 FPN. There are also existing byelaws in place which exclude dogs from specified areas within Wirral including children's' play areas and cemeteries.

The introduction of the proposed offences on dog control issues, within the framework of a PSPO, would ensure a consistent approach and enable authorised or delegated officers to deal with offences in a timely manner to the benefit of local communities across Wirral. A byelaw that prohibits an activity regulated by a PSPO is of no effect in relation to the restricted area during the currency of the order.

5.3 Consultation

The Anti-Social Behaviour, Crime and Policing Act sets out the requirements for consultation. It states "the necessary consultation" means consulting with:

- a) the chief officer of police and the local policing body;
- b) whatever community representatives the local authority thinks it appropriate to consult;
and
- c) the owner or occupier of land within the restricted area.

The consultation process and outcomes are set out in section 8 of this report in the summary report at **Appendix 3**.

5.4 Legal Challenge

An interested person has the right to challenge the imposition of a PSPO within 6 weeks by way of application to the High Court. The grounds on which an application may be made are:

- a) that the local authority did not have power to make the order, or to include particular prohibitions or requirements imposed by the order;
- b) that a requirement under the relevant Chapter within the Act was not complied with in relation to the order or variation.

Any person who is prosecuted for the alleged breach of the PSPO may also challenge the validity of the PSPO. It is important therefore to be satisfied that each of the prohibitions and requirements being sought within the PSPO can be reasonably justified.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

The coordination and management of the dog control PSPO will be undertaken by a number of Council services using existing resources. The management functions required range from managing the enforcement arrangements through the Environmental Enforcement Contract and contractor performance, on site liaison with local stakeholders and ongoing promotion and public awareness campaigning and monitoring the medium and long term impacts of the PSPO.

The Strategy and Partnerships team will work with a range of colleagues and the enforcement contractor to undertake the reviews of the PSPO, including the recommended 12 month review following implementation.

7.0 RELEVANT RISKS

The headline risks identified with the establishment of a dog control PSPO for Wirral are outlined below, along with their mitigation:

- 7.1 Risk – The PSPO and its measures cannot be enforced due to inadequate provisions.
Mitigation – The dog control PSPO will be robust and its implementation will be subject to a detailed plan of execution, which will include the installation of a signage scheme and clear instruction to the enforcement contractor.
- 7.2 Risk - An inadequately delivered public awareness and promotion campaign of the PSPO's implementation fails to raise public awareness.
Mitigation – The Council's Communications Team will lead the delivery of a comprehensive promotion campaign before and following the PSPO's implementation. The Council will work with both local and national stakeholders to raise awareness of the PSPO's establishment and will promote unrestricted dog walking locations as part of this. The Council will act upon information and intelligence received about dog control and nuisance issues.
- 7.3 Risk – Dog owners believe the PSPO's measures are so restrictive they adversely affect their ability to exercise their pets, Wirral gains a reputation for not being dog friendly.
Mitigation – The PSPO's promotion campaign will highlight Wirral being one of the best places in the country to own a dog with miles and miles of unrestricted open

space to exercise dogs. The Council will work with local stakeholders and groups to promote unrestricted dog walking locations across Wirral.

- 7.4 Risk – The Council’s enforcement contractor gains a reputation for being overzealous and not applying a reasonable approach to dog control, leading to complaints and appeals.

Mitigation – The Council’s environmental enforcement contract, enforcement policy and protocols set out clear expectations for the application of interpreting and enforcing the dog control PSPO’s measures. The enforcement contractor’s officers will receive training and briefing delivered by the Council prior to the establishment of the PSPO.

- 7.5 Risk – The enforcement contractor fails to adequately plan and deploy officer resource to provide any impact on the level of issues and incidents that are occurring.

Mitigation – The Council’s environmental enforcement contract provisionally includes the enforcement of the dog control PSPO and as such sets out resource requirements in the event that the PSPO was established. The Council has put in place contract monitoring arrangements and the PSPO will be included within this framework established.

8.0 ENGAGEMENT / CONSULTATION

8.1 The Council carried out a full public consultation and stakeholder engagement exercise over a 6 week period from 4th June – 15th July 2018. Statutory consultees including the Chief Constable of Merseyside Police, the Police and Crime Commissioner’s Office, landowners in Wirral and national and local stakeholders, were specifically consulted as part of the exercise. The summary report of the consultation and stakeholder engagement exercise can be viewed at **Appendix 3**.

8.2 The Council delivered a comprehensive communication programme to give all interested parties and individuals notice of the consultation exercise. The communications programme was delivered prior to and during the consultation exercise. The Council was also able to utilise social media to interact with residents and other parties about the proposed dog control measures during the exercise. This included clarifications and myth busting.

8.3 The headlines of the consultation exercise delivered through an online survey are as follows:

- 8975 responses to the online survey (73% of which were dog owners).
- The Council received over 200 written submissions about the PSPO proposals from residents and other parties.
- Results of questions about proposed dog restrictions:

	Yes	No
Children's playgrounds	80%	16%
Marked and fenced sports pitches	61%	33%
Tennis courts and bowling greens (all year round)	75%	20%
West Kirby beach	26%	72%
Meols beach	23%	73%
Moreton beach (Leasowe Bay)	22%	74%
Wallasey beach	23%	74%
New Brighton beach	26%	72%
Fenced areas around the lakes in Birkenhead Park (see map)	43%	47%

- Requirement for dogs to be on a lead in certain areas:

	Yes	No
Designated picnic areas	65%	31%
A and B classed public roads and highways	72%	23%
Public car parks	69%	27%
The grounds of cemeteries and crematoria	77%	19%
Communal areas within the grounds of allotment sites	54%	32%

- 81% agree with proposal to issue an FPN where the request to put a dog on a lead (if they were acting in an aggressive or threatening manner or disturbing others, regardless of location) is not acted upon.
- 42% have experienced dogs acting aggressively towards them, their family or their dog in Wirral.
- 82% agree with the FPN for dog fouling being raised to the same level (£100) as a littering FPN.

8.4 Petition Received

During the course of the public consultation exercise, the Council received a petition of signatures, "Petition Opposing PSPOs", and written deputation from 2 campaigning groups - 'Wirral Good Dogs' and 'Peaceful Protest – Wirral Dog Bans' in response to the Council's proposals for the dog control PSPO, stating within a joint covering letter 'the new rules are draconian and unjustified and will shut off these shared spaces to dog owners – something that will have a detrimental impact on our sense community.' The petition amounted to 15,033 signatures.

In addition, an online petition on change.org, "Stop the proposed PSPO being enforced across the Wirral", has obtained 15,286 signatures (as of 19th September 2018).

The numbers of signatures quoted are correct at the time of writing this report.

As the "Petition Opposing PSPOs" received over 3,000 signatures, it was therefore eligible to be heard by Council, as per the Council's petition scheme. The petition was

subsequently received by Council at its meeting on 15 October 2018, with the lead petitioners addressing Council.

9.0 EQUALITY IMPLICATIONS

An Equality Impact Assessment (EIA) of the proposed dog control PSPO has been completed. The EIA considered the implications of the proposed dog control PSPO on identified protected groups. The main issues identified were establishing required and appropriate exemptions to the PSPO's measures and ensuring the impact of restrictions imposed through the PSPO are managed and that alternative unrestricted dog walking venues are identified and promoted.

REPORT AUTHOR: Mike Cockburn
Lead Commissioner - Environment
Telephone:0151-606-2453
Email: mikecockburn@wirral.gov.uk;

APPENDICES

Appendix 1 – Proposed Dog Control Public Spaces Protection Order
Appendix 2 – Proposed Locations for the Application of PSPO Measures
Appendix 3 – Consultation and Stakeholder Engagement Summary Report

REFERENCE MATERIAL

- Anti-Social Behaviour, Crime and Policing Act 2014, Section 59
- 'Out of Order – The Impact of Access Restrictions on Dogs and Their Owners' - The Dog Kennel Club 2017
- The Equalities Act 2010
- Local Government Association Guidance on PSPOs February 2018

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
No previous Council history	