



# Cabinet Meeting

## 19 July 2017

<b>Report title</b>	Proposed Public Spaces Protection Order – Dog Control	
<b>Decision designation</b>	AMBER	
<b>Cabinet member with lead responsibility</b>	Councillor Steve Evans City Environment	
<b>Key decision</b>	YES	
<b>In forward plan</b>	YES	
<b>Wards affected</b>	All	
<b>Accountable director</b>	Ross Cook, City Environment	
<b>Originating service</b>	Public Protection	
<b>Accountable employee(s)</b>	Shaun Walker	Public Protection: Service Lead
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<b>Report to be/has been considered by</b>	Place Leadership Team: 8 May 2017 Strategic Executive Board: 16 May 2017 Scrutiny Board 4 July 2017	

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### Recommendation(s) for action or decision:

The Cabinet is recommended to:

Approve the appended proposed citywide public spaces protection order ("PSPO") – dog control – replacing the three existing dog control orders.

## **1.0 Purpose**

- 1.1 To present findings from a review of existing dog control orders.
- 1.2 To seek approval for the proposed Public Spaces Protection Order ("PSPO") pursuant to section 59 to 75 of the Anti-Social Behaviour, Crime and Policing Act 2014 ("the Act") to replace the existing dog control orders following a change in tools and powers introduced in the Act. (A copy of the Proposed PSPO is attached for ease of reference.)
- 1.3 It is noted that per the City of Wolverhampton Council's Constitution at Paragraph 16.3 Chapter 2 Delegations to Cabinet, the discharge of environmental functions of the Council relating to environmental health, including management of dogs, is Cabinet's responsibility. (Page 88 of Constitution.)

## **2.0 Background**

- 2.1 The Council currently has three distinct dog control orders currently in operation, made 27 February 2007 pursuant to Chapter 1, Part 6 of the Clean Neighbourhoods and Environment Act 2005. These orders prohibit dog fouling (and those in control of dogs failing to clean up after their dog), contain a requirement to keep dogs on a lead when walking dogs alongside certain major arterial routes in the City, and include a requirement to put any dog perceived to be a nuisance on a lead at the insistence of an officer from the Council's Public Protection team.
- 2.2 By virtue of section 75(2) Anti-Social Behaviour, Crime and Policing Act 2014 ("the Act"), within three years of the commencement of the Act (that is by 01 October 2017) all dog control orders will automatically lapse and will instead convert to PSPOs (sections 59 to 75 of the Act).
- 2.3 However, rather than simply letting this happen, a review of the existing dog control orders has concluded that it is considered that the City of Wolverhampton Council would be better served by amalgamating the existing three dog control orders and expanding their provisions as explained below and, as can be seen in the appended proposed PSPO, such course of action will require a new PSPO. The Anti-Social Behaviour, Crime and Policing Act 2014 came into force in October 2014 and introduced streamlined tools and powers to address Anti-Social Behaviour (ASB). Cabinet were briefed on local implementation of the legislation on 12 November 2014 and a multi-agency ASB Steering Group was established to oversee the changes. Wolverhampton has been instrumental in trialling these revised approaches and has shared practice across the West Midlands.
- 2.4 On 22 July 2015, Cabinet approved a trial of the first two PSPOs for the City; one in Low Hill to address long standing traveller encampment incursions and a second in Park Village to address entrenched ASB. The PSPOs came into force in September 2015, and a review of their use has shown that whilst both locations have required focussed deployment of staff resource and significant coordination of enforcement activity between partner agencies, there has been a marked reduction in the associated ASB linked to these locations. It was agreed that no further PSPOs would be issued across the City

until the review of these two PSPOs was concluded and any associated difficulties regarding implementation addressed. Given the success of the PSPOs in Low Hill and Park Village, further PSPOs are being considered (on a City-wide basis where appropriate) to tackle other longstanding sources of nuisance and anti-social behaviour.

- 2.5 The Act made provision for existing dog control orders to automatically become PSPOs within 3 years of the legislation coming into force. However, given the length of time that the dog control orders have been in place, it is appropriate that a review of their use is undertaken to inform the decision about the need for continuation of these powers. The existing dog control orders therefore remain in force until October 2017 or until such time as they are revoked by a replacement PSPO.
- 2.6 The proposals directly support the following Corporate Plan objectives:
- Keeping the City Clean – by reducing the prevalence of dog faeces throughout the City.
  - Promoting and Enabling Healthy Lifestyles – by reducing the risk associated with exposure to the pathogen *Toxocara Canis* found in dog faeces.
  - Supporting Businesses, Encouraging Enterprise and Investment – improving city image by targeting hotspot locations where dogs have previously posed a problem.
  - Keeping the City Safe – creative use of new legal powers to tackle ASB and tackle nuisance and danger posed by out of control dogs.
- 2.7 This report was considered as a pre-decision scrutiny item by the Scrutiny Board on the 4 July 2017 and will therefore not be available to call-in once a decision is made by the Executive.

### **3.0 Review of Existing Dog Control Orders**

- 3.1 Although the existing framework of three dog control orders has allowed the successful and effective regulation of irresponsible dog ownership for a number of years, as set out in 2.3 above, a review of the existing dog control orders has established that the Council should amalgamate the existing three dog control orders and expand their provisions. It is believed this will simplify and strengthen the enforcement landscape around the control of dogs.
- 3.2 It is felt that by amalgamating the three existing dog control orders, it will provide clarity and simplicity for those searching for dog control orders in that all relevant orders relating to dog control in Wolverhampton will then appear in one place – the proposed PSPO.
- 3.3 In terms of the requirement to keep dogs on leads near to arterial routes, it is also considered that there is no good reason why certain arterial routes in the City are covered but other roads which are equally as busy fall outside the order.

- 3.4 With reference to dogs near schools, in play areas and on tennis courts, dogs in these locations, especially when there is a large number of people about can get excited and become out of control. This is perceived to be a potential nuisance which is only partially catered for in the existing orders. It was felt the review of the existing dog control orders provided an opportunity to consolidate the existing orders into one all-encompassing order and fill in the gaps that exist presenting the opportunity for dogs to cause nuisance.

#### **4.0 The Proposed Dog Control PSPO**

- 4.1 The proposed PSPO comprises 6 sections – 4 requirements and 2 prohibitions.
- 4.2. The first requirement is for those in control of dogs to keep their dogs on a lead when near to a major road in Wolverhampton. The order then lists the ring road and 10 other “A” roads (being all the A roads) which pass through Wolverhampton. This requirement is based on public safety and the welfare of dogs being an attempt to prevent stray or uncontrolled dogs getting loose on the main road.
- 4.3 The second requirement relates specifically to Northcote Farm and is an identical replacement for the the original 2007 Order. Those in control of dogs are to keep their dogs on a lead at all times when walking on the areas coloured red on Plan 2 . Also, dogs are prohibited from areas marked green on the same Plan 2 but they are allowed to run off lead on land marked yellow. This is carried over from the previous order and is designed to prevent uncontrolled dogs attacking or killing livestock on the Northcote Farm site.
- 4.4 The third requirement is for those in control of dogs to keep their dogs on a lead within 100 metre radius of any school or academy building where such educational institute caters for pupils up to 16. The educational institutes are listed by reference to a list of 0-16 years educational institutions in Wolverhampton which the authority maintains and updates from time to time. This prohibition is required to prevent out of control dogs biting or frightening children as sight of lots of children going to or leaving school at the same time can cause some dogs to get over excited.
- 4.5 The fourth requirement is for those in control of dogs to put their dogs on a lead if instructed to do so by a police officer (including police community support officer) or Council Officer. This is carried over from the existing dog control order which is designed to allow Environmental Health Officers to instruct owners/those who should be in control of dogs, to put their dogs on a lead where dogs are causing obvious nuisance. The only difference is this order intends to empower police officers and police community support officers in this respect just as certain council officers are currently empowered.
- 4.6 Regarding the prohibitions, there is a prohibition against dog fouling in public areas in the City (and the requirement for those in control of a dog to pick up after their dog noting that it will not always be possible or practicable to prevent a dog fouling.) This is carried over from the existing order.

- 4.7 Dogs can be a nuisance on tennis courts and in children's play areas. Therefore, there is a specific list of tennis courts and play areas from where dogs will be banned altogether. There is still a vast amount of public space throughout the City where dogs can be exercised, and if challenged, on that basis, it would be argued such prohibition is proportionate. Appropriate signage will be erected clearly marking play areas and tennis courts from where dogs are prohibited.
- 4.8 The above prohibitions and requirements do not apply to those in control of assistance dogs.

## 5.0 Consultation

- 5.1 The process for seeking authorisation of a PSPO requires consultation to be undertaken with Police and with communities impacted by the order. Consultation with West Midlands Police has taken place at a multi-agency ASB meeting held on 1 March 2017; Police are in support of the introduction of an expanded dog control PSPO to retain the existing provisions, amalgamated into one all-encompassing order in line with the proposals detailed in section 4 of this report.
- 5.2 A six week public consultation on the proposals supported by the City Council's Communications Team was undertaken commencing mid May 2017 and opportunities to feed into the consultation were broadly publicised.
- 5.3 As a key part of the public consultation process, Scrutiny Board considered and supported the proposals at its meeting on 4 July.
- 5.4 A total of 363 responses were received from local residents, plus groups including the local schools, Dogs Trust, Kennel Club, local vets, dog walking groups and Guide dog representatives. A summary of feedback received to date is detailed below which represents strong support for the new PSPO.

Question asked:	Agreed or Strongly Agreed
Dogs be kept on a lead at all times when on footpaths near the major arterial roads in the City of Wolverhampton Council area	97%
Dogs to be kept on a lead at all times when on land at Northcote Farm	71%
Dogs to be kept on a lead at all times within 100 metre radius of the curtilage of any school in the City of Wolverhampton Council area that teachers up to the age of 16.	87%
Those in control of dogs in the City of Wolverhampton Council area immediately put dogs for which they are responsible on a lead at the instruction of any police officer, PCSO or Council officer ( showing identification)	92%
It will be an offence to allow any dog in your control to foul on any public footpath or in any public place within the City of	98%

Wolverhampton Council area and failing to remove the faecal matter immediately	
It will be an offence to allow any dog to enter a fenced children's play area or tennis court	92%

## **6.0 Implementation**

- 6.1 Subject to Cabinet authorisation of the PSPO, the proposals must be publicised and will be subject to a six week period during which an appeal against the proposals can be made to the High Court before coming into force. This will include communications through partner and community networks, social media, the Council and SWP websites and an advertisement in the local press.
- 6.2 Subject to Cabinet approval and assuming no appeal against the proposals is lodged with the High Court within the six week timeframe, the PSPO would come into force on 3 September 2017.
- 6.3 The conditions of the PSPO would be in place for a period of three years; revisions to the prohibitions contained within the PSPO are not proposed within this period, however, the impact of the order will be closely monitored to allow for any operational variations across partners to be built in as required. The PSPO will be subject to review before its expiry in April 2020.

## **7.0 Recommendations**

- 7.1 In light of above and responses to the consultation exercise, Cabinet is requested to authorise:
- i) A three year city-wide dog control order requiring a person in control of a dog (or dogs) to keep their dog(s) on a lead when alongside the major arterial roads in the City and on certain areas of land at Northcote Farm.
  - ii) A requirement to keep dogs on a lead within a 100 metre radius of any school or academy (catering for pupils 0 to 16 years.)
  - iii) A prohibition from allowing dogs to enter specified fenced children's play areas and public park tennis courts in the City of Wolverhampton Council area.
  - iv) A prohibition from those in control of dogs allowing their dogs to foul in public places and a requirement on those in control of dogs to remove any faecal matter immediately from public spaces.
  - v) A requirement for those in control of dogs, on the instruction of any police officer, police community support officer or officer of the Council, to put any dog in their control on a lead.
  - vi) A review of the PSPO prior to its expiry in April 2020.

## **8.0 Financial implications**

- 8.1 The cost of the statutory notice, consultation and signage will be met from existing budgets within the Public Protection Team's budgets. [HM/01062017/G]

## **9.0 Legal implications**

- 9.1 The Anti-social Behaviour, Crime and Policing Act 2014 ("the Act") came into effect on 20 October 2014.
- 9.2 Section 59 of the Act gives local authorities the power to make PSPOs which are intended to deal with anti-social behaviour and nuisance in a particular area that is detrimental to the local community's quality of life by imposing conditions on the use of that area.
- 9.3 Before making a PSPO, councils must consult with the local police (section 72(3) and 72(4) of the Act). Formal consultation was held with West Midlands Police on this matter on 01 March 2017 where support for these proposals was recorded.
- 9.4 The Act also stipulates that councils must consult with the local community on any proposed PSPO. Consultation opportunities have been widely publicised across the city within communities, councillors, business sector and partner agencies.
- 9.5 Anyone who lives in or regularly works or visits the area can appeal a PSPO in the High Court within six weeks of issue. The PSPO will be publicised locally. Signage will not be erected until after the six week period or, if an appeal is lodged, after any High Court ruling.
- 9.6 With regard to breaches of a PSPO, it is an offence for anyone, without reasonable excuse, to do anything s/he is prohibited from doing by virtue of the order. Furthermore, it is an offence for anyone, without reasonable excuse, to fail to comply with a requirement in the PSPO. Section 67 of the Act specifies that anyone found guilty of an offence can be fined up to £1,000 by the Magistrates' Court. Section 68 of the Act provides that, in the alternative, a constable or authorised officer of the Local Authority (that is a person authorised by the Managing Director or Head of Regulatory Services in accordance with a previous delegated authority of Tim Johnson, Strategic Director, Place dated 04 May 2016) may serve a fixed penalty notice on those in alleged breach offering them the opportunity to discharge liability by payment of Fixed Penalty Notice in an amount set by each local authority up to £100. Fixed penalty notices in Wolverhampton are currently set at £80.
- 9.7 The prohibitions and requirements of a PSPO need to be proportionate to the nuisance/mischief they seek to prevent. Limiting the requirements to A roads (not "B" roads), and educational institutions for pupils 0 to 16 not beyond 16, is proportionate it will be argued in the event of any challenge. [AS/14062017/Q]

## **10.0 Equalities implications**

- 10.1 An equalities screening assessment has been carried out. There is no evidence to suggest that the proposal may be directly or indirectly discriminatory. It is to be noted, that the proposed PSPO cannot apply and makes it clear on the face of the order that it does not apply to those in control of assistance dogs.

## **11.0 Environmental implications**

- 11.1 The proposals would have a positive environmental impact by reducing the hazards associated with dog fouling. Requiring dogs causing a nuisance to be kept under control around the major arterial traffic routes in the City and in and around play areas, tennis courts and schools, would abate the actual and likely nuisance caused by out of control dogs and make the environment throughout the City feel safer and more welcoming.

## **12.0 Human resources implications**

- 12.1 There are no known human resources implications.

## **13.0 Corporate landlord implications**

- 13.1 There are no known corporate landlord implications.

## **14.0 Schedule of background papers**

- 14.1 There are no relevant background papers.