

Committee: Sustainable Communities Overview and Scrutiny Panel

Date: 2 November 2017

Wards: All

Subject: Public Space Protection Orders - Dog Controls

Lead officer: Chris Lee, Director of Environment & Regeneration

Lead member: Councillor Nick Draper, Cabinet Member for Community & Culture

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Recommendations:

1. Members are asked to note the contents of the report and relay any comments or observations they may have for consideration as part of the current review of dog controls within the borough.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. This report sets out the Council's proposals for future dog controls in public spaces within the borough.
- 1.2. The proposals replace existing dog control measures made under the Clean Neighbourhoods and Environment Act 2005 and include some new measures to address some additional concerns that have emerged since these existing measures were first adopted in 2007.

2 DETAILS

2.1 Merton has two Dog Control Orders currently, adopted in 2007:

- It is an offence for any dog owner or dog walker to fail to clean up after their dog. This order applies across the whole borough.
- Dog exclusion areas have been designated where dogs are not permitted: children's playgrounds and ball courts, for example.

2.2 Public Space Protection Orders (PSPOs) are a relatively new measure, established by the Anti-social Behaviour, Crime and Policing Act 2014, that replace some existing legislation and introduces wider discretionary powers to address particular nuisances or problems that are detrimental to the local community's quality of life. PSPOs seek to ensure that the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour. The Orders can be enforced by fixed penalty notices or prosecution, by the police or the Council. Under the 2014 Act the existing Dog Control Orders ceased to exist after 17 October 2017 but under transitional provisions they automatically become effective as PSPO's for a period of three years, i.e. until October 2020.

- 2.3 Local residents and open space users have reported concerns about: dogs off their leads; large and unmanageable groups of dogs; aggressive dogs and dogs being exercised inside children's playgrounds; and dog faeces on sports pitches and within children's playgrounds.
- 2.4 The Council is committed to tackling these issues and has recently undertaken a community consultation on its proposals.
- 2.5 The PSPOs consulted upon are:
- Prohibiting dog fouling by ensuring that dog owners and walkers clear up after their dogs
 - The establishment of dog exclusion areas, predominantly children's playgrounds and enclosed play and sports facilities, such as tennis courts, multi-use games areas and bowling greens
 - Dogs to be put on a lead in public spaces when directed to do so by an authorised officer of the council, a police officer or a police community support officer. (This proposal includes Morden Hall Park and Mitcham Common, but not Wimbledon Common which has its own byelaws).
 - The maximum number of dogs that can be walked by one person in all public open spaces at any one time is four. (This proposal includes Morden Hall Park and Mitcham Common, but not Wimbledon Common which has its own byelaws).
- 2.6 At the time of writing this report (the consultation is due to close on 30th October 2017) the Council had received almost 1,200 responses to its survey questionnaire. Officers will provide a verbal update on the initial findings at the Scrutiny Panel meeting.
- 2.7 The detailed findings of the consultation survey exercise will be reviewed and a summary report will be produced that will form the basis of a recommendation to the Council's Cabinet in respect of the Orders to be adopted.

3 ALTERNATIVE OPTIONS

- 3.1. An alternative option would be to do nothing which would not address some of the existing community concerns relating to dogs and their control within public spaces.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. A public consultation exercise on the Council's dog control proposals was undertaken between 24 August and 30 October 2017.

5 TIMETABLE

- 5.1. A nine week community consultation exercise on the Council's dog control proposals closed on 30 October 2017. The findings of the survey that was integral to the consultation will inform the recommendations presented to Cabinet for its approval in the early part of 2018 and for the adoption of the agreed measures as soon as possible thereafter.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. There are no specific financial or resource implications arising from these proposals, except to note that the enforcement of these Orders could, upon their adoption, generate income for the authority, albeit the sums concerned are not considered to be significant.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. Section 59 of the Anti-social Behaviour, Crime and Policing Act 2014 enables a local authority to make a public spaces protection order (PSPO) if it is satisfied on reasonable grounds that two conditions are met. The first condition is that the 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 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.
- 7.2. When deciding whether to make a PSPO, section 72 requires a local authority to carry out consultation.
- 7.3. The validity of a PSPO can be challenged in the High Court within 6 weeks of it being made. There are two possible grounds. Firstly, that the local authority did not have power to make the order, or to include particular prohibitions or requirements in the order. The second grounds is that a requirement of the Act for making the Order was not complied with.
- 7.4. Non compliance with a PSPO is a criminal offence and subject to a fine of up to £1000 on conviction. The Act provides however that liability can be discharged by payment of a fixed penalty within 14 days, with a discount for earlier payment. The maximum amount that can be charged is £100 and the Council will have to decide the amount of the fixed penalty and the discounted amount.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. A public consultation exercise on the Council's proposals was conducted between August and October 2017. Details of the consultation were widely circulated within the borough, including to community groups and organisations representing the interests of dogs and dog walkers to ensure that participation by stakeholders was maximised.

- 8.2. Section 72 of the Act requires a local authority to have regard to Convention rights when deciding whether to make a PSPO and states particular regard must be given to the rights of freedom of expression and freedom of assembly under articles 10 and 11 of the Convention.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. Measures to control unruly and overly aggressive dogs are integral to the current proposals.
- 9.2. Additional proposals include restrictions on the maximum number of dogs that can be walked by one person in all public open spaces at any one time in order to address concerns in relation to large packs of dogs commonly witnessed in some local open spaces and measures to exclude dogs from sensitive public spaces such as children's playgrounds.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. The risk of not addressing this issue would be irresponsible and could be considered as a failure by the Council to address the genuine needs and wishes of the community, and exacerbating existing community health and safety concerns from dog faeces and overly aggressive dogs, for example.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- None

12 BACKGROUND PAPERS

- 12.1. The recent public consultation details and survey on dog controls in the borough can be viewed here:

www.merton.gov.uk/dogcontrolorders

Public Spaces Protection Orders – Guidance for Councils:

https://www.local.gov.uk/sites/default/files/documents/10.4%20-%20PSPO%20guidance_03_1.pdf