

Committee: Sustainable Communities Overview and Scrutiny Panel

Date: 1 November 2018

Wards: All

Subject: Public Space Protection Orders: Dog Controls

Lead officer: Chris Lee, Director of Environment and Regeneration

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

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Recommendations:

1. Members are requested to note the contents of the report, including progress in relation to the adoption of a new Public Space Protection Order and other recent initiatives in relation to dog controls in the borough.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. At the meeting of the Sustainable Communities Overview and Scrutiny Panel meeting of 2 November 2017, Panel members were provided with a briefing on proposals for a new Public Space Protection Order (PSPO) specifically in relation to dog controls in Merton borough, established by the Anti-social behaviour, Crime and Policing Act 2014.
- 1.2. This report updates the Panel in respect of progress with the PSPO in the intervening period and also on some other dog control initiatives that have taken place during the course of this year.

2 DETAILS

- 2.1. After considering the clear findings of a borough-wide community consultation exercise on dog control issues carried out during a 9 week period between August and October 2017, officers made recommendations on the composition of the dog control PSPO, based upon the very clear findings of the survey questionnaire (data provided in para. 2.2 below), in reports to Cabinet (15 January 2018) and later Council (7 February 2018) that were approved.
- 2.2. The following new dog control PSPO for Merton's open spaces was approved by Council on 7 February 2018:
 - The prohibition of dog fouling by ensuring that dog owners and walkers clear up after their dogs. (*98.5% support in the consultation survey*)
 - The establishment of dog exclusion area, predominantly children's playgrounds and enclosed play and sports facilities, such as tennis

courts, multi-use games areas and bowling greens. *(87.0% support in the consultation survey)*

- Dogs to be put on a lead in public places when directed to do so by an authorised officer of the council, a police officer or a community support officer. (This proposal would apply within Morden Hall Park and on Mitcham Common, but not on Wimbledon Common which has its own byelaws). *(76.5% support in the consultation survey)*
- The maximum number of dogs that can be walked by one person in all public open spaces (including Morden Hall Park and Mitcham Common, but excluding Wimbledon Common) at any one time is four. *(70.0% support in the consultation survey)*

- 2.3. Council, furthermore, approved the recommendation that the Director of Environment & Regeneration, in consultation with Cabinet Member for Community and Culture, finalise and bring the PSPO into force as soon as possible.
- 2.4. The drafting of the PSPO has been further developed and refined during the course of this year following a legal challenge to the Richmond PSPO where the challenge was unsuccessful. It was appropriate to suspend issue until the legal challenge had been completed to gauge any changes that may be made and whether the Dog Control PSPO was a viable instrument going forward. Some changes were made during June 2018 to make the Dog Control PSPO more robust which included updating the exemption.
- 2.5. Maps of sites, site lists and site descriptions, including the locations of dog exclusion areas, have been prepared as articles for inclusion in the schedule to the Dog Control PSPO. Previously the Dog Control Order map covered the entire borough (all land) with simply Wimbledon Common excluded. The PSPO must now specify exemptions, where in the past this would have not been needed with Dog Control Orders, etc.
- 2.6. Once officers are content with the revised draft Dog Control PSPO then, subject to the approval of the Director of Environment & Regeneration and the Cabinet Member for Community and Culture, the Dog Control PSPO will be sealed, signed and issued, when it will come into force.
- 2.7. Furthermore, and following representations made to the Council by professional dog walkers, concerned about the impact of the proposed PSPO upon their businesses, consideration has been given to the feasibility of the Council introducing a licensing scheme for approved professional dog walkers to enable them to walk dog numbers greater than four. Discussions are still ongoing on this topic between the relevant Council divisions, but such a scheme would present some significant challenges for the authority, not least how such a scheme would be administered and enforced, and that such a proposal could seriously undermine some of the existing community fears that the proposed new PSPO seeks to address, specifically site users encountering large packs of dogs in some of the borough's key and popular parks.
- 2.8. Officers from the local authority's Enforcement and Community Waste team, working with our waste enforcement contractor have undertaken a number of patrols at various open space sites during the course of the summer of

2018, including at popular dog walking locations such as Wimbledon Park and Morden Park.

- 2.9. Monitoring and tackling dog fouling issues has been a particular focus of the team's efforts, with venues known to attract large numbers of dogs, (commonly under the charge of professional dog walkers) receiving much attention, especially those open spaces around the margins of Wimbledon Common (Beverley Meads and Commons Extension).

3 ALTERNATIVE OPTIONS

- 3.1. None for the purposes of this report.
- 3.2. Whereas existing dog fouling and dog exclusion provisions would remain in force under transition provisions until October 2020, these would not address existing community concerns in relation to dogs on leads and multiple dog walking. The Council's approach is therefore to enshrine all dog control measures into one new PSPO.

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.
- 4.2. A report on the Council's dog control proposals was considered by the Sustainable Communities Overview and Scrutiny Panel on 2 November 2017.
- 4.3. Recommendations on the proposed dog control PSPO were considered and approved by Cabinet on 15 January 2018 and by Council on 7 February 2018.

5 TIMETABLE

- 5.1 The Order will come into force when issued, for a period of 3 years from this date, unless extended pursuant to section 60 of the relevant Act.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. There are no significant financial or resource implications arising from these proposals. There will be some minor additional on-site signage needed that will be funded from within existing budgets and the operational aspects of the enforcement of the PSPO will be included within the routine duties of the departmental officers, The Council's environmental enforcement contractors and the police, as appropriate.
- 6.2. The enforcement of the PSPO will generate income from the issuing of fixed penalty notices, currently £80, with enforcement duties primarily undertaken by the Council's waste enforcement contractors.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. It was determined that the Council had the legal power to make a PSPO as contained in Section 59 of the 2014 Act and its Regulations and pursuant to guidance issued by the Secretary of State.
- 7.2. Under Section 66 of the 2014 Act any challenge to the validity of a PSPO must be made in the High Court by an interested person within six weeks of it being made. An interested person is an individual who lives in, or regularly works in, or visits the restricted area. This means only those directly affected by the restrictions have the power to challenge. The validity of a PSPO can be challenged on two grounds only: -
 - (a) that the Council did not have the power to make the order, or to include particular prohibitions or requirements imposed.
 - (b) that the procedural requirements for making the PSPO were not complied with.
- 7.3. On any application to the High Court setting out the validity of a PSPO the Court may suspend the operation of the Order or any of the prohibitions or requirements imposed by it until the determination of the proceedings. If the Court is satisfied the Council erred and the applicant has been substantially prejudiced by that failure, it may quash the Order or any of the prohibitions and requirements imposed by it.
- 7.4. It is an offence under Section 67 of the 2014 Act, without reasonable excuse to (a) do anything prohibited by a PSPO or (b) to fail to comply with any requirement imposed by a PSPO. A person convicted of such an offence may be fined up to £1,000 (Level 3 of the Standard Scale) and ordered to pay costs. A police constable, or authorised person such as a Council officer, may enforce an offence by initially issuing a Fixed Penalty Notice (FPN), giving the recipient the opportunity to pay the FPN to discharge his/her liability to conviction for the offence.
- 7.5. The 2014 Act enables the Council to determine the amount of an FPN up to a maximum of £100.
- 7.6. Once approved, the Order must be published on the Council website and notices put up where practical on or adjacent to the public places to which the Order relates publicising the fact that the Order has been made and its effect.
- 7.7. A licensing scheme for professional dog walkers to enable then to walk dog numbers greater than four would require consideration on review of the Dog Control PSPO and would require consideration by Cabinet and/or Council.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. Officers have had regard to the Council's duties under the Equality Act 2010.
- 8.2. An Equalities Analysis has been carried out to consider the potential benefits as well as potential impacts for protected groups.

- 8.3. Exemptions have been included within the draft PSPO for assistance dogs.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. Measures to control unruly and overly aggressive dogs are included within the draft PSPO.
- 9.2. The draft PSPO also includes restrictions on the maximum number of dogs that can be walked by one person in public open spaces within Merton (with the exception of Wimbledon Common) at any one time in order to address concerns in relation to large packs of dogs that are commonly witnessed in some of the borough's larger 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 matter could be considered as a failure by the Council to address the genuine needs and wishes of the community, highlighted during the recent consultation exercise, and compounding existing health and safety fears arising 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

- London Borough of Merton Public Spaces Protection Order 2018 (Dog Control) (Draft)

12 BACKGROUND PAPERS

- 12.1. A report on the survey and results of the 2017 public consultation exercise on dog controls in the borough can be viewed here:
www.merton.gov.uk/dogcontrolorders
- 12.2. Public Space Protection Orders - Guidance for councils:
<https://www.local.gov.uk/public-spaces-protection-orders-guidance-councils>
- 12.3. *Public Space Protection Orders - Dog Controls*. Report and minutes of the Sustainable Communities Overview and Scrutiny Panel, 2 November 2017.
- 12.4. *Dog Control Public Space Protection Orders*. Report and minutes of Cabinet, 15 January 2018.
- 12.5. *Dog Control Public Space Protection Orders*. Report and minutes of Council, 7 February 2018.

**APPENDIX 1 - London Borough of Merton Public Spaces Protection
Order 2018 (Dog Control) (Draft)**

**LONDON BOROUGH OF MERTON
ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014
LONDON BOROUGH OF MERTON
PUBLIC SPACES PROTECTION ORDER 2018 (DOG CONTROL)**

The Council of the London Borough of Merton (in this Order called “the Council”) hereby makes the following Order pursuant to Section 59 of the Anti-social Behaviour, Crime and Policing Act 2014 (“the Act”).

This Order may be cited as the “London Borough of Merton Public Spaces Protection Order 2018 (Dog Control)”.

This Order comes into force on *[Date]* and for a period of 3 years from this date, unless extended pursuant to section 60 of the Act.

In this Order the following definitions apply:

“Person in charge” means the person who has the dog in his possession, care or company at the time the offence is committed or, if none, the owner or person who habitually has the dog in his possession.

“Restricted area” means the land described and/or shown in the maps in the Schedule to this Order.

“Authorised officer” means a police officer, PCSO, Council officer, and persons authorised by the Council to enforce this Order.

The masculine includes the feminine.

This Order applies to National Trust land within the administrative area of the Council, and land owned by the Mitcham Common Conservators within the administrative area of the Council. It does not apply to Wimbledon Common.

The Offences

Article 1 - Dog Fouling

(1) If within the restricted area a dog defecates, at any time, and the person who is in charge of the dog fails to remove the faeces from the restricted area forthwith, that person shall be guilty of an offence unless –

- (a) The person has a reasonable excuse for failing to do so; or

- (b) The owner, occupier or other person or authority having control of the restricted area has consented (generally or specifically) to his failing to do so

(2) For the purposes of this Article –

- (a) Placing the faeces in a receptacle in the restricted area which is provided for the purpose, or for the disposal of waste, shall be a sufficient removal from the land;
- (b) Being unaware of the defecation (whether by reason of not being in the vicinity or otherwise), or not having a device or other suitable means of removing the faeces shall not be a reasonable excuse for failing to remove the faeces;
- (c) A person in charge and in the company of a dog in the restricted area shall be guilty of an offence if, on the request of an Authorised Officer the person fails to forthwith produce a device for or other suitable means of removing dog faeces and taking it home or to a suitable waste disposal receptacle (whether or not the dog has defecated) unless the person has a reasonable excuse for not doing so.

Article 2 – Dogs on leads

(1) A person in charge of a dog shall be guilty of an offence if, at any time, he does not comply with a direction given to him by an Authorised Officer to put and keep the dog on a lead in the restricted area unless –

- (a) The person has a reasonable excuse for failing to do so; or
- (b) The owner, occupier or other person or authority having control of the restricted area has consented (generally or specifically) to his failing to do so

(2) An authorised officer may only give a direction under this Order if such restraint is reasonably necessary to prevent a nuisance or behaviour by the dog that is likely to cause annoyance or disturbance to any other person, or to a bird or another animal

Article 3 – Dog Exclusion Area

(1) A person in charge of a dog shall be guilty of an offence if, at any time, he takes a dog onto, or permits the dog to enter or remain on land within the restricted area unless–

- (a) The person has a reasonable excuse for doing so; or
- (b) The owner, occupier or other person or authority having control of the restricted area has consented (generally or specifically)

Article 4 – Multiple Dog Walking

(1) A person in charge of more than one dog shall be guilty of an offence if, at any time, and at the same time, he takes on to the restricted area more than four dogs unless –

- (a) The person has a reasonable excuse for doing so; or
- (b) The owner, occupier or other person or authority having control of the restricted area has consented (generally or specifically).

Exemptions

Nothing in this Order applies to —

- a. a disabled person (within the meaning of the Equality Act 2010) whose disability restricts his/her ability to comply with the article and where the dog is their guide dog or assistance dog; or
- b. a person who is training an assistance dog in an official capacity; or
- c. a dog used by the police or other agencies permitted by the Council for official purposes.

Penalty

It is an offence under section 67 of the Act for a person without reasonable excuse —

- (a) to do anything that they are prohibited from doing by a public spaces protection order, or,
- (b) to fail to comply with a requirement which they are subject to under a public spaces protection order.

A person guilty of an offence under section 67 is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

THE COMMON SEAL OF THE MAYOR AND
BURGESSES OF THE LONDON BOROUGH
OF MERTON was affixed this day of
2018 in the presence of:

South London Legal Partnership

Schedule identifying Restricted Areas for Articles 1-4 of the Order

Article 1 - Dog Fouling – map & description

Article 2 - Dogs on leads – map & description

Article 3 - Dog Exclusion Area – map & list

Article 4 - Multiple Dog Walking – map & description

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