DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
RESOURCES DIRECTORATE	OPERATIONAL MANAGEMENT COMMITTEE	9 NOVEMBER 2021	4

VARIATION OF PUBLIC SPACES PROTECTION ORDERS FOR ENFORCEMENT OF DOG CONTROL - UPDATE

PUBLIC ITEM
This item is for consideration in the public part of the meeting.

SUMMARY

Public spaces protection orders ('PSPOs') are in place in parks and open spaces across the borough requiring anyone in charge of a dog to put the dog on a lead when requested by an authorised officer. Following several incidents including protected wildlife or other dogs being attacked by dogs that were not on a lead, a public consultation has been conducted as part of the necessary process to review the existing PSPOs and consider if dogs should be required to be always on a lead when in Ashton Gardens, Lowther Gardens, Fairhaven Lake and (insofar as it is not already the case) the Promenade and Promenade Gardens.

It has also proven to be more challenging to communicate and enforce an 'on lead' by request.

The report sets out the findings from the public consultation and requests that members consider these outcomes in deciding whether the PSPOs should be reviewed so that dogs are required to be always on leads in the areas listed.

RECOMMENDATIONS

1. Committee considers whether to change the PSPOs for Ashton Gardens, Lowther Gardens, Fairhaven Lake and (insofar as it is not already the case) the Promenade and Promenade Gardens to "dogs on lead" areas, rather than "dogs on lead by request" areas.
2. If the committee is minded, to delegate authority to the Director of Resources to vary and make the orders as set out below:
    a. Varying the existing PSPO that requires dogs to be placed on a lead when requested by an authorised officer to do so by (i) adding Ashton Gardens, Lowther Gardens and Fairhaven Lake to schedule 1 ("places where this order does not apply") and (ii) Moving Promenade Gardens and Promenade from schedule 2 ("places where this order does not apply at certain time of the year") to schedule 1 ("places where this order does not apply");
    b. Making new PSPOs for each of Ashton Gardens, Lowther Gardens and Fairhaven Lake requiring dogs to be always kept on a lead; and
    c. Varying the existing PSPO that requires dogs in the Promenade and Promenade Gardens to be kept on a lead to apply all year round, and not just between Good Friday and September 30

SUMMARY OF PREVIOUS DECISIONS

Operational Management Committee – 23 August 2021, it was RESOLVED:

1. That the Committee was minded to make changes to the PSPOs to change Ashton Gardens, Lowther Gardens, Fairhaven Lake and (insofar as it is not already the case) the Promenade and Promenade Gardens to "dogs on lead" areas, rather than "dogs on lead by request" areas.

2. To delegate authority to the Director of Resources to carry out the necessary consultation, publicity and notification for the following:

a. Varying the existing PSPO that requires dogs to be placed on a lead when requested by an authorised officer to do so by (i) adding Ashton Gardens, Lowther Gardens and Fairhaven Lake to schedule 1 ("places where this order does not apply") and (ii) Moving Promenade Gardens and Promenade from schedule 2 ("places where this order does not apply at certain time of the year") to schedule 1 ("places where this order does not apply");

b. Making new PSPOs for each of Ashton Gardens, Lowther Gardens and Fairhaven Lake requiring dogs to be always kept on a lead; and c. Varying the existing PSPO that requires dogs in the Promenade and Promenade Gardens to be kept on a lead to apply all year round, and not just between Good Friday and September 30.

3. To delegate authority to the Director of Resources to vary and make the orders as set out above if there are no substantive representations as a result of the consultation and publicity

CORPORATE PRIORITIES	
Economy – To create a vibrant and healthy economy	
Environment – To deliver services customers expect	√
Efficiency – By spending money in the most efficient way	
Tourism – To create a great place to live and visit	√

REPORT

1. A Public spaces protection order (PSPO) for many public open spaces in the Borough requires (subject to certain limited exceptions) dogs to be placed on leads when requested by a police officer, police and community support officer, dog warden or other person authorised by the Council. Dogs are not required to be kept on a lead unless a request is made. The PSPO applies (among other places) to Ashton Gardens, Fairhaven Lake, and Lowther Gardens[1].

2. The PSPO also applies to Promenade Gardens and the Promenade between Fairhaven Road car park and North Promenade car park during the periods before Good Friday and after 30 September in any year. During the period from Good Friday to 30 September, a different PSPO requires dogs to be always kept on a lead.

3. Following several incidents including protected wildlife and dogs being attacked by dogs that were not on a lead in these locations, as well as incidents with children scared by dogs off leads a review of the current PSPO was carried out. The review included a public consultation conducted to seek views on the existing PSPOs and consider if dogs should be required to be always on leads in the areas of Ashton Gardens, Lowther Gardens, Fairhaven Lake and (insofar as it is not already the case) the Promenade and Promenade Gardens. These are locations where there is a high volume of visitors, protected wildlife, and significant use by children all year round. The current 'by request' arrangements are challenging to clearly communicate on signage and the request should be based on the rationale of some risk from the dog which is difficult to enforce.

4. The consultation ran from the 7th September 2021 until 5th October 2021 and invited feedback from all stakeholders who use these parks and gardens.

5. Stakeholders were asked to provide answers to questions via an online form:

There is a borough-wide PSPO requiring dogs to be put on a lead if asked by an authorised officer. Several parks and open spaces owned by Fylde Council are enjoyed by a large number of locals and visitors alike and many have

[1] Separate PSPOs require dogs to be kept out of enclosed outdoor play areas and ornamental water features (including paddling pools).

protected wildfowl.

a) Do you agree that the current PSPO as described above is adequate in the following locations or do you prefer an alternative?

b) Do you own a dog?

c) Do you exercise your dog in any of the locations mentioned above?

d) If yes, which locations

e) To help collate an insight of local specific needs, please provide details of your postcode

6. 754 responses to the consultation were received and responses to the various questions have been summarised below:

The majority of consultation respondents live in close proximity to one of the four locations under review, and 3 in 5 are dog owners - the consultation received 754 responses and 82% of all respondents live in the FY8 postcode area; 3 in 5 respondents are dog owners and 65% exercise their dog(s) in more than one of the locations under review.

More respondents agree with changing the PSPO than disagree - in each location, between 56%-58% of all respondents want the PSPOs to be changed; between 42%-45% either agree with the current PSPOs or do not want any PSPO in place; a minority of respondents suggest having on lead requirement in particular areas of public gardens only, e.g. around lakes.

An overwhelming majority of non dog owners want dogs to be always on leads in all four locations - across all four locations, over 8 in 10 non dog owners are in favour of requiring dogs to be always on leads, compared to 4 in 10 dog owners.

A key concern is that changing the PSPOs will only punish responsible owners - the most common theme amongst respondent comments is that changing the PSPOs to require dogs to be on leads will just punish most dog owners who act responsibly and won't change the behaviour of the minority of irresponsible owners; and

The most common reasons given for changing the PSPOs are to protect wildlife and other people - a fifth of respondents feel that dogs need to be on leads to protect wildlife and/or other people.

7. A detailed analysis of responses to the public consultation is included as an appendix to this report. In considering the outcomes from the consultation it is important to state that the council must look to protect all park users (humans and animals); the option not to have a PSPO at all was not under consideration because it would not resolve the issue; and there are other significant suitable alternative public open spaces near all the areas under review for dogs to be off leads i.e. St Anne's beach and Lytham Green.

8. PSPOs may be made by a district council if they are satisfied on reasonable grounds that two conditions are met:

The first condition is that-

a. activities carried out in a public place within the council'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.

Members will need to carefully consider that any additional restrictions introduced should meet these criteria.

9. The Government has published statutory HYPEtps://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/956143/ASB_Statutory_Guidance.pdf" guidance on the use of public space protection orders and other anti-social behaviour powers. This is part of the guidance about "controlling the presence of dogs":

Under the Animal Welfare Act 2006, owners of dogs are required to provide for the welfare needs of their animals. This includes providing the necessary amount of exercise each day, which in many cases will require dogs to be let off the lead whilst still under control.

Councils will be aware of the publicly accessible parks and other public places in their area which dog walkers can use to exercise their dogs without restrictions.

When deciding whether to make requirements or restrictions on dogs and their owners, local councils will need to consider whether there are suitable alternative public areas where dogs can be exercised without restrictions. Councils should consider if the proposed restrictions will displace dog walkers onto other sensitive land, such as farmland or nature conversation areas.

Councils should also consider the accessibility of these alternative sites for those with reduced mobility, including but not limited to, assistance dog users. For example, is there step free access, are there well--maintained paths and what transport options are available, including in the early morning and evening.

[…]

Councils should also consider whether alternative options are available to deal with problems around irresponsible dog ownership or dogs being out of control. It may be that if there are local problems with specific individuals allowing their dogs to stray or run out of control for which one of the other available powers, such as the Community Protection Notice, may be more appropriate. The Department for Environment, Food and Rural Affairs has produced detailed guidance in the form of a practitioner's guide on the range of tools available to deal with irresponsible dog ownership. Targeted measures and educational days for irresponsible dog owners can bring about real improvements in the behaviour of irresponsible dog owners.

10. In deciding whether make the changes discussed, the council is required to "*have particular regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the [European] Convention [on Human Rights]*". Those rights are:

    ARTICLE 10 Freedom of expression

    1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

    2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

    ARTICLE 11 Freedom of assembly and association

    1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

    2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

    There is no evidence to support that anything in any of the new orders or the existing orders as varied engages any of the rights guaranteed by articles 10 or 11.

11. The Committee is requested to consider whether to make changes to the PSPOs to amend Ashton Gardens, Lowther Gardens, Fairhaven Lake and (insofar as it is not already the case) the Promenade and Promenade Gardens to "dogs on lead" areas, rather than "dogs on lead by request" areas, subject to the criteria set out in

paragraph 10 being met.

IMPLICATIONS	
Finance	There are no financial implications arising directly from this report.
Legal	The powers to make and vary the orders, and the considerations members need to take into account, are set out in the report.
Community Safety	The proposals are directed towards enhancing protection for swans. Members will need to consider how that aim aligns with the statutory criteria for making or varying PSPOs.
Human Rights and Equalities	Members should carefully consider the need for the additional restrictions. If they are not satisfied that the restrictions are needed to address activities that have had or are likely to have a detrimental effect on the quality of life of those in the locality, they should not make the changes.
Sustainability and Environmental Impact	No material impact
Health & Safety and Risk Management	No material impact

LEAD AUTHOR	CONTACT DETAILS	DATE
Kathy Winstanley	Kathy.winstanley@fylde.gov.uk	21st October 2021

BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
Anti-social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers Statutory guidance for frontline professionals	Updated June 2021	www.gov.uk/government/publications/anti-social-behaviour-crime-and-policing-bill-anti-social-behaviour
Saved Facebook postings	August 2021	Town Hall, Lytham St Annes
Report: "Swan dies after reportedly being savaged by dog on St Annes boating lake"	August 2 2021	http://www.blackpoolgazette.co.uk/news/people/swan-dies-after-reportedly-being-savaged-by-dog-on-st-annes-boating-lake-3331661 www.blackpoolgazette.co.uk/news/people/swan-dies-after-reportedly-being-savaged-by-dog-on-st-annes-boating-lake-3331661
Professional Dog Walkers' Guidelines	Accessed August 2021	http://www.dogstrust.org.uk/latest/dog%20walking%20guide%20online.pdf www.dogstrust.org.uk/latest/dog%20walking%20guide%20online.pdf

Appendix

Dogs on leads: *Analysis of responses to public consultation*, October 2021, PS Research