

DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
RESOURCES DIRECTORATE	OPERATIONAL MANAGEMENT COMMITTEE	23 AUGUST 2021	4
VARIATION OF PUBLIC SPACES PROTECTION ORDERS FOR ENFORCEMENT OF DOG CONTROL			

PUBLIC ITEM

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

SUMMARY

Public spaces protection orders ('PSPOs') are in place across the borough for the enforcement of dog control under the Anti-Social Behaviour Crime and Policing Act 2014. Among other things, these require anyone in charge of a dog in Ashton Gardens, Lowther Gardens, Fairhaven Lake to put the dog on a lead when requested by an authorised officer. The same applies to parts of the Promenade and the Promenades Gardens during the off-season.

The report sets out incidents of protected wildlife or dogs being attacked by dogs that were not on a lead and requests that members consider 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 it is 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. If the committee is so minded, 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. 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.

SUMMARY OF PREVIOUS DECISIONS

Operational Management Committee – May 2017: The committee unanimously RESOLVED to approve the recommendations to implement public spaces protection orders across the borough for the enforcement of dog control under the Anti-Social Behaviour Crime and Policing Act 2014.

Operational Management Committee – September 2020: The committee unanimously RESOLVED:

1. To extend all the public space protection orders for a further three years,
To delegate authority to the Director of Resources to carry out the necessary consultation, publicity and notification and then to extend the order, unless the director considers that the order should not be extended until a response to the consultation or publicity has been considered by the committee at a special meeting.

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

PRESENT POSITION

1. A Public spaces protection order (PSPO) requires 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 do not have to be kept on a lead unless there has been such a request. The PSPO applies (among other places) to Ashton Gardens, Fairhaven Lake, and Lowther Gardens¹.
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. Failure to comply with a PSPO is an offence which can be dealt with by a fixed penalty notice of £100 or by prosecution (maximum fine of £1000).
4. Full details of the PSPOs for Dog Control in Fylde are available on the Council website at: [Fylde Dog Enforcement Measures](#).

ATTACKS BY DOGS

5. A report was received on the 15th July that a cygnet had been killed by dog at Fairhaven Lake. The dog was off lead at the time and when the owner was challenged stated, “it had never done anything like that before”.
6. Further reports have been received of two Swans being attacked at Ashton Gardens although at this time, witnesses to any attacks have not been identified.
7. On the 3rd August, information was received from Brambles Wildlife Rescue, who had attended to a Swan at the boating pool adjacent to the YMCA reporting that it died following the attack. A social media report has suggested that the attack was intentional, but the offender has not been identified. Officers from the Environmental Enforcement Team have been patrolling the area to offer advice and reassurance and Lancashire Constabulary have confirmed they had not received any reports regarding this attack.
8. In addition to the attacks on swans, a dog was attacked by another dog close to the swimming pool on the Promenade at St Annes in April 2021 and had to be destroyed because of her injuries.
9. Some of these attacks may have been avoided if the dog involved had been kept on a lead, unless the person in charge of the dog had allowed the dog to attack. Members are therefore asked to consider making changes that

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

would mean that dogs would have to be always kept on a lead in Ashton Gardens, Lowther Gardens, Fairhaven Lake and the parts of the Promenade and Promenade Gardens mentioned above in paragraph 2. This would replace the present requirement for them to be placed on a lead when requested.

10. The changes that would need to be made would be:

- a. Varying the public open spaces PSPO by (1) adding Ashton Gardens, Lowther Gardens and Fairhaven Lake to schedule 1 ("places where this order does not apply") and (2) moving Promenade Gardens and Promenade from schedule 2 ("places where this order does not apply at certain times 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 Promenade and Promenade Gardens PSPO to require dogs to be always kept on a lead, and not just between Good Friday and September 30.

11. Members may also want to consider amending the existing PSPOs to limit the number of dogs that can be walked at a time by any single person. For example, [guidelines](#) issued by the Pet Industry Federation to professional dog walkers recommends that no more than four dogs be walked at a time. The guidance is endorsed by a number of animal welfare organisations.

CRITERIA FOR PSPOs

12. 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 any additional restrictions they are minded to introduce against these criteria.

13. The Government has published statutory [HYPE143/ASB_Statutory_Guidance.pdf](#) [guidance](#) on the use of public space protection orders and other anti-social behaviour powers². 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.

[...]

Available at: [ile/956143/ASB_Statutory_Guidance.pdf](#)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/956143/ASB_Statutory_Guidance.pdf

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.

14. 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.

PROCEDURE

15. Before making or varying³ a PSPO, the authority must carry out “*the necessary consultation, the necessary publicity, and the necessary notification*”. The ‘necessary consultation’ means consulting with the Police and Crime Commissioner, any community representatives that the council considers it appropriate to consult and (unless it is not reasonably practicable to do so) the owner of the affected land. The ‘necessary publicity’ means publicising the proposal. The ‘necessary notification’ means notifying the county council and any relevant parish council.
16. A decision to make or vary a PSPO cannot be taken until representations made as a result of the consultation and publicity have been considered.
17. If members consider that the criteria set out in paragraph 10 are met and are minded to make the changes discussed, it is recommended that authority be given to the Director of Resources (1) to carry out the processes of consultation, publicity and notification, and (2) in the event that there are no substantive representations as a result of the consultation and publicity to make and vary PSPOs to give effect to the changes make the changes. If the consultation and publicity result in substantive representations being made, the committee would need to consider them and decide whether to go ahead with the changes.

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
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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