

Committee(s):	Date(s):
Epping Forest and Commons Committee	6 July 2020
Subject: Extension of existing PSPOs at Burnham Beeches	Public
Report of: The Director of Open Spaces Report author: Superintendent of The Commons	For Decision
<p style="text-align: center;">Summary</p> <p>Five Dog Control Orders (DCOs) were introduced by your Committee at Burnham Beeches Special Area of Conservation (SAC) and National Nature Reserve (NNR) on 1st December 2014. These subsequently became Public Spaces Protection Orders (PSPOs) and their effect was extended by your Committee for a further three-year period from 1st December 2017. They concern themselves solely with the reduction of antisocial dog behaviour on that site.</p> <p>Appendix 1 provides a review of the effectiveness of the existing PSPOs for the period 1st April 2019 – 31 March 2020. It indicates that the PSPOs have generally maintained and in some instances further improved the very significant reduction of nuisance and serious incidents associated with irresponsible dog ownership first achieved by the introduction of DCOs in 2014.</p> <p>PSPOs may not have effect for more than three years, unless extended. The existing PSPOs must therefore be extended by 30th November 2020 if they are to continue in force from 1st December 2020.</p> <p>As a first step along the route to extending the PSPOs, the City Corporation is required to carry out the necessary consultation, publicity and notification. Useful guidance on the statutory requirements can be found in Appendix 2.</p> <p>This report seeks authority to carry out that process. Any representations received will be brought back to the September meeting of this Committee for decision.</p> <p>Recommendation(s)</p> <p>Members are asked to:</p> <ol style="list-style-type: none"> 1. Agree Option 3 i.e. Authorise the Superintendent to carry out the necessary consultation, publicity and notification on the extension of the existing PSPOs at Burnham Beeches for a further three year period from 1st December 2020. 	

Main Report

Background

2. DCOs were introduced by the Clean Neighbourhoods and Environment Act 2005, and the City was able to make DCOs outside of its local authority area by virtue

of the Control of Dogs (Designation of the Common Council of the City of London as a Secondary Authority) Order 2012. Following extensive public consultation, five DCOs were approved by this Committee at Burnham Beeches with effect from 1st December 2014.

3. That legislation was repealed by the Anti-social Behaviour, Crime and Policing Act 2014, which introduced a new power to make PSPOs. That power was again granted to the City Corporation, in relation to open spaces outside of its local authority area, by the Anti-social Behaviour (Designation of the City of London Corporation) Order 2015.
4. PSPOs can be used to address a wider range of anti-social behaviour than DCOs, but include all of those matters previously covered by DCOs. However, whereas DCOs had no fixed expiry date, PSPOs may not have effect for more than three years, unless extended. Any existing DCOs were automatically treated as PSPOs and your Committee resolved that the five PSPOs at Burnham Beeches should continue in force for a further three-year period from 1st December 2017.
5. The aim of the PSPOs at Burnham Beeches is to deal effectively with dog-related issues that have had a detrimental effect on the quality of life for those visiting the site and have been of a persistent and unreasonable nature over many years and thereby:
 - a. Ensure a fair and proportionate balance between the needs of visitors so that all can enjoy the site
 - b. Minimise the number of dog related incidents and complaints recorded each year
 - c. Ensure the efficient use of local resources to minimise the impact of dog control management on the resources available to manage the site
 - d. Assist the City Corporation to meet its obligations under the Open Spaces Act 1878, Natural Environment and Rural Communities Act 2006, and other legislation.
 - e. Assist the City Corporation in its legal duty to protect and conserve the ecology and biodiversity of Burnham Beeches.

Current Position

6. The PSPOs currently operating at Burnham Beeches are as follows. **Map 1 (within Appendix 3). Also Appendix 5 - Sealed orders currently operating:**

Order 1. Failing to remove dog faeces. Applies to 100% of the site.

Order 2. Not keeping a dog on a lead (max length of lead 5m). Applies to the area **marked 2** on the map

Order 3. Not putting and keeping a dog on a lead when directed (told) to do so by an authorised officer. Applies in the area **marked 3** on the map.

Order 4. Permitting a dog to enter land from which dogs are excluded. This applies to the area **marked 4** on the map i.e. the immediate vicinity of the Burnham Beeches café.

Order 5. Taking more than the specified (allowed) number of dogs (which a person may take) onto the land. The specified number of dog previously approved by this committee is a maximum of 4 and applies to 100% of the site.

7. Monitoring the effectiveness of DCOs (and latterly PSPOs) since their introduction in 2014 indicates that they achieved a dramatic reduction in dog-related incidents.
8. Members have received annual reports summarising the results of this monitoring work. **Appendix 1.** Members are asked to take those findings into account when considering the recommendation of this report.
9. The existing PSPOs at Burnham Beeches are currently due to expire on 30th November 2020. If they are to be extended for up to a further three years the City Corporation is required to carry out the necessary consultation, publicity and notification as required by section 72 of the 2014 Act. Useful guidance on the statutory requirements can be found in the Local Government Association guide at **Appendix 2.**
10. Statutory guidance on the Anti-social Behaviour, Crime and Policing Act 2014 has also been produced by the Home Office, and further guidance on dog control measures is also available from DEFRA. All of this guidance has been taken into account by officers in producing this report.
11. As part of the introduction of DCOs (and latterly PSPOs), officers developed a Dog Management Strategy (DMS). **Appendix 3.** The DMS describes in detail the background to the introduction of PSPOs, their aims, evidence of need, visitor access strategy, summary of all consultations up until the last PSPO review and a description of the powers to be used and to which parts of the site they apply.
12. Under section 67 of the Anti-social Behaviour, Crime and Policing Act 2014 it is an offence for a person without reasonable excuse to do anything that they are prohibited from doing by a PSPO, or to fail to comply with a requirement to which they are subject under a PSPO. A person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale (£1,000). Under section 68, a constable or authorised person may issue a fixed penalty notice to anyone that they have reason to believe has committed an offence, offering that person the opportunity to discharge any liability to conviction by payment of a fixed penalty. In September 2017 your Committee set the fixed penalty for breach of a PSPO at Burnham Beeches at £80 with a reduction to £50 if paid within 10 days. Your Committee also approved an Enforcement Protocol to ensure a fair and consistent approach PSPO enforcement. **Appendix 4.**

Relevant Considerations

13. Before introducing DCOs at Burnham Beeches, your Committee had to be satisfied that this was a necessary and proportionate response to problems

caused by the activities of dogs and those in charge of them. Your Committee also had to balance the interests of those in charge of dogs against the interests of those affected by the activities of dogs.

14. The test for making a PSPO is set out in section 59 of the Anti-social Behaviour, Crime and Policing Act 2014. The City Corporation may make a PSPO if satisfied on reasonable grounds that activities carried out in a public place are having, have had or will have a detrimental effect on the quality of life of those in the locality, and those activities are or are likely to be persistent, unreasonable and justify the restrictions imposed. The only prohibitions or requirements that may be imposed are ones that are reasonable to prevent or reduce the detrimental effect of the activity. As any remaining DCOs were automatically converted into PSPOs, it was accepted that the activities identified in the City Corporation's DCOs were capable of having such a detrimental effect, and that the restrictions imposed were capable of being reasonable.
15. Under section 60 of the Anti-social Behaviour, Crime and Policing Act 2014, PSPOs must be reviewed every three years to ensure that they are still necessary. If the City Corporation is satisfied on reasonable grounds that a PSPO will continue to prevent the occurrence or recurrence of the detrimental activities identified in that order, or an increase in the frequency or seriousness of those activities, the PSPO can be extended for up to three years. There is no limit to the number of times that a PSPO can be reviewed or extended.
16. In deciding whether to extend the period for which a PSPO has effect, and if so for how long, the City Corporation must 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 – although it is not considered that the PSPOs at Burnham Beeches infringe upon those rights in any significant way.
17. DEFRA guidance also states that local authorities should look to provide other suitable dog walking areas in the locality, where restrictions are in place, although dog walkers are not banned from the 'dogs on leads' area. They are simply required to put their pets on a lead that may extend to up to 5 metres in length, whilst in this area. Access is available to them as for all visitors, to all other areas of Burnham Beeches excluding a very small part around the café. The City Corporation also provides 220 acres at Burnham Beeches and a further 200 acres at Stoke Common where dogs can be off leads. This more than adequately meets both the guidance and animal welfare requirements.
18. Officers have provided robust evidence of the need for and effectiveness of the existing PSPOs at Burnham Beeches in maintaining a reduction in the seriousness and frequency of associated antisocial activities.

Options

19. Members are therefore asked to consider the following three options at this stage:

Option 1: Do nothing.

- a) If Members decide to do nothing, then the PSPOs will expire on 30th November 2020. The site would revert to the pre 2014 situation at Burnham Beeches whereby the Orders listed in paragraph 5 would no longer apply and officers would have to rely upon local byelaws for enforcement at Magistrates Court. The current byelaws require only that a dog:
 - i. Must have a collar and tag
 - ii. Must be kept under effective control.
- b. All other anti-social behaviour by dogs and their owners would be governed by a dog walker's voluntary code of conduct, which had, over many years proved ineffective and extremely difficult to enforce.
- c. As a result and given the robust nature of supportive evidence, it may be reasonably assumed that there would be a substantial increase in dog fouling on the National Nature Reserve and the return of large groups of dogs under the control of a single person.
- d. Further, the exclusion zone around the café currently provided by PSPO 4 would disappear thereby re-exposing the café to hygiene issues and customers to unwanted interactions with dogs.
- e. Similarly the 'dogs on lead at all times' zone provided by PSPO 2 would cease to exist thereby removing the opportunity for visitors to avoid direct contact with dogs and exposing a significant area of the National Nature Reserve where wildlife on the NNR currently thrives, to poorly controlled dogs. This option is not recommended

Option 2: Consider varying the existing PSPOs.

- a) There has been little if any complaint about the existing PSPOs over the last three years and this indicates the effectiveness of the previous consultations and their careful implementation to provide the best balance between the needs of all visitor types and nature conservation. Monitoring results indicate that the existing PSPOs are extremely effective at reducing antisocial dog behaviours. As such, there is no evidence to support the need to amend the existing PSPOs.
- b) This option would require a redesign of the PSPO's and an increase in management costs, as all site signage would have to be reviewed and produced anew.
- c) The necessary consultation would be delayed to allow time to identify and incorporate any amendment to the existing PSPOs. This would in turn risk a lengthy period with no PSPOs in effect across the site. This option is not recommended.

Option 3 - Consult on the extension of the existing PSPOs.

- a) If Members are minded to extend the effect of the existing PSPOs beyond 30th November 2020, then the Superintendent should be authorised to commence the necessary consultation, publicity and

notification as set out below. This option seeks to maintain the current PSPOs and continue the marked improvement in dog-related behaviour at Burnham Beeches since 2014. **This option is recommended.**

Proposals

20. Monitoring reports since 2015 indicate that PSPOs have maintained a significant reduction in the level of nuisance and serious incidents associated with irresponsible dog ownership when compared to the previous years where most antisocial dog behaviors were managed via the voluntary dog code.
21. As the need for PSPOs is perceived to be ongoing, **Option 3** is the recommended approach. The results of the public consultation to inform a decision report for consideration at the September meeting of this Committee.
22. Before extending the period for which a PSPO has effect, section 72 of the Anti-social Behaviour, Crime and Policing Act 2014 requires that the City Corporation must first consult:
 - i. The Chief of Police, and the local policing body for the area
 - ii. The local authority for the area (Buckinghamshire Council)
 - iii. Whatever community representatives the City Corporation thinks it appropriate to consult
23. The relevant parish councils and the unitary council must also be notified of the proposed extension, although they will in any event also be included in the consultation exercise.
24. The full list of consultees, including community representatives was developed for the 2017 PSPO consultation process. It is proposed to update the 2017 list of consultees and use it to guide the 2020 consultation process. The list includes a wide range of bodies, individuals and organisations such as the Dogs Trust, Kennel Club, Ramblers Association, Open Spaces Society, Cycling Clubs, local schools, Scout and Guide groups the Burnham Beeches and Stoke Common Consultative Group and site visitors.
25. Any proposal to extend a PSPO must also be publicised although there is no legal requirement to advertise details of a PSPO consultation in a local newspaper. However, as best practice, the guidance states that order-making authorities should where possible seek to do so, or investigate a suitable alternative to reach those most affected.
26. The proposed consultation period commences 7th July 2020 and ends on 18th August 2020 providing a total of 43 days. The proposed consultation will be publicised using a variety of methods including adverts in the local press, direct contact, group meetings, social media, Burnham Beeches and Parish sign boards
27. **Table 2** summarises the necessary consultation audience and indicates the timetable by which further decisions may be made by this committee concerning the extension of PSPOs beyond 30th November 2020.

28. Members are asked to consider **Step 1** and should the recommendation of this report be approved, the Superintendent will follow **Steps 3-7** (Step 2 having been previously achieved in January 2020) prior to a further decision report concerning Steps 8-10.

Table 2

EFCC Approval to Consult		
Step 1.	EFCC report seeking approval to consult on extension of PSPOs - for Decision.	July 2020
Necessary Consultation.		
Step 2.	BBSCCG. Inform of proposal to carry out the necessary consultation, publicity and notification in 2020 subject to EFCC approval	Completed at January 2020 meeting
Step 3.	Visitor comments.	July 7 th – Aug 18 th 2020
Step 4.	Other external audiences as recommended in the guidance. (For comment. See paragraph 24).	July 7 th – Aug 18 th 2020
Step 5.	Formal Consultee representations (notification and comment - see paragraphs 22 and 23).	July 7 th – Aug 18 th 2020
Step 6.	BBSCCG site visit or virtual meeting	August 18 th 2020
Step 7.	EFCC to consider 'approval to extend' PSPOs for 3 years. Decision report.	Sept 6 th 2020
Necessary Notification and Publicity - Extension of PSPO's		
Step 8.	Period and deadline to complete the <i>Necessary Notification and Publicity</i> , to extend the PSPO's for a further three years Review of Dog Management Strategy, Enforcement Protocol and necessary authorisation of enforcement officers as required	September - 30 th Nov 2020
Step 9.	PSPO's extension (If approved)	1 st Dec 2020 onwards
Step 10.	Deliver/ Monitor as approved	1 st Dec 2020 onwards

Corporate & Strategic Implications

The proposals help deliver the aims of the Corporate Plan 2018 – 2023

- **Contribute to a flourishing Society**
- **Shape Outstanding Environments.**

29. They also support the Open Spaces Department's objectives and outcomes, in particular:

Open spaces and historic sites are thriving and accessible.

- Our open spaces, heritage and cultural assets are protected, conserved and enhanced
- Our spaces are accessible, inclusive and safe
- Our habitats are flourishing, biodiverse and resilient to change

Spaces enrich people's lives

- Nature, heritage and place are valued and understood (3)
- People feel welcome and included (4)

Business practices are responsible and sustainable.

- Our practices are financially, socially and environmentally sustainable (5)

Implications

30. The cost of the PSPO consultation and enforcement process is estimated at £9,500 including officer time, refresher training, consultation, advertising and notification costs. All costs will be met from local risk budgets as shown in **Table 1** below:

Table 1 – Estimate of delivery costs.

Activity	Cost
Advertising	£2,500
Management time (estimated at 10 days)	£3,500
Staff Training (refresher)	£1,000
Administration (set up, and notification)	£2,500
Total estimated costs	£9,500

Conclusion

31. The PSPOs (and the previous DCOs) at Burnham Beeches have greatly reduced the level of antisocial nuisance and serious incidents associated with irresponsible dog ownership over the last 6 years. Each PSPO allows your officers to enforce certain behaviours to the benefit of the majority of site visitors and wildlife within the NNR.

32. It is recommended that the Superintendent consult on extending their effect beyond 30 November 2020 to maintain the current improvements in dog-related behaviour and ensure that all visitors and wildlife can continue to use and enjoy the site safely.

Appendices

- **Appendix 1** – Review of PSPO effectiveness 2019 - 2020
- **Appendix 2** – LGA guidance
- **Appendix 3** – Burnham Beeches Dog Management Strategy 2017

- **Appendix 4** – Enforcement Protocol
- **Appendix 5** – Existing PSPOs

Background Papers:

- **July 2017 EFCC ‘Decision Report’.** Proposal to extend the use of DCOs as PSPOs at Burnham Beeches – outcome of the public consultation process

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