

Committee(s):	Date(s): 07/09/2020
Subject: Proposal to extend the use of Public Spaces Protection Orders at Burnham Beeches – Outcome of the public consultation process	Public
Report of: Open Spaces	For Decision
Report author: Director of Open Spaces	

Summary

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.

The Director of Open Spaces requested approval to consult on the extension of the 5 Public Spaces Protection Orders at Burnham Beeches for a further three years, commencing 1st December 2020, in his report to this Committee dated 6th July 2020.

Approval was granted for the Superintendent to carry the necessary consultation, publicity and notification commencing 7th July and ending 18th August 2020.

This report seeks your Committees' decision concerning the continued use of the five existing PSPOs. Your officers' advise that there are reasonable grounds to conclude that these PSPOs will continue to prevent the recurrence of the detrimental activities prohibited by them.

Recommendation(s)

Members are asked to:

1. Approve Option 1 as explained in this report i.e. Extend the effect of the existing PSPOs at Burnham Beeches for a further three years from 1st December 2020.
2. Authorise the Comptroller and City Solicitor to make the replacement/extended Orders.
3. Delegate authority to the Director of Open Spaces to authorise officers at Burnham Beeches to issue Fixed Penalty Notices in relation to Public Spaces Protection Orders.
4. Set the fixed penalty for breach of a Public Spaces Protection Orders at Burnham Beeches at £80 with a reduction to £50 if paid within 10 days.

Main Report

Background

1. 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.

2. The Director of Open Spaces requested approval to consult on the extension of the five Public Spaces Protection Orders at Burnham Beeches for a further three years, commencing 1st December 2020, in his report to this Committee dated 6th July 2020.
3. Approval was granted at that time, for the Superintendent to carry the necessary consultation, publicity and notification.
4. The necessary consultation, publicity and notification to extend the above orders for a further 3 years commenced 7th July 2020 and ended on 18th August 2020.

Current Position

5. The PSPOs currently operating at Burnham Beeches as follows – **Map 1**:

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 four and applies to 100% of the site.

6. 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.

Relevant Considerations.

7. Before introducing DCOs at Burnham Beeches in 2014, 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.

8. 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 in 2017, 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.
9. 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.
10. 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. Regard should also be had to the Enforcement Protocol approved by your Committee in order to ensure a fair and consistent approach to enforcement. This Protocol, previously approved by your Committee in 2017, would remain in effect if the PSPO's were extended.
11. 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.
12. Each year Officers have reported to this committee, 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.

Fixed Penalty Notices

13. PSPOs are enforced by the use of Fixed Penalty Notices (FPNs) and/or through the Magistrates' Court. FPNs can only be issued by officers who have been appropriately authorised. It is proposed that the officers authorised will be the Burnham Beeches Rangers who are currently responsible for enforcement of the PSPOs.
14. It is recommended that the Director of Open Spaces is given delegated authority to authorise officers as and when necessary, for example following any change of staff. Your Committee granted such a delegation prior to the introduction of DCOs, in November 2014 and again in 2017 when they were converted to PSPOs and extended for three years. However, for the avoidance of doubt, your Committee is asked to confirm that this delegation includes the new PSPO arrangements.
15. The Rangers, along with all other staff at Burnham Beeches, will maintain relevant training to maintain their detailed understanding of legal and operational issues. This again demonstrates your Committee's commitment to good practice.
16. It is also necessary to set the level of the fixed penalty for breach of a PSPO and any discount for early payment. It is recommended that the amount of the fixed penalty for breach of a PSPO is set at £80 - reduced to £50 if paid within 10 days. This reflects the current position for PSPOs.

Outcome of the Public Consultation exercise.

17. A public consultation exercise was carried out to meet the statutory requirement set out in Section 72 of the Anti-social Behaviour, Crime and Policing Act, 2014 to carry out the necessary consultation, publicity and notification prior to making a decision.
18. There were 5 elements to the public consultation exercise:
 - i. Farnham Royal Parish Council, Burnham Parish Council and Buckinghamshire Council were formally notified of the proposal and their opinions sought.
 - ii. The Chief of Police for Thames Valley and the Police and Crime Commissioner were actively engaged and their opinions sought.
 - iii. The Burnham Beeches and Stoke Common Consultative group were actively engaged and their opinions sought as to the proposal.
 - iv. A wide range of statutory and non- statutory organisations, social activity groups, animal welfare specialist, local schools and businesses were actively engaged and their opinions sought as to the proposal.
 - v. The general public, local communities and visitors were actively engaged and their opinions sought.
19. Methods of engagement included:
 - vi. Public notices in the local press (4 newspapers),
 - vii. Emails to relevant individuals and organisations setting out the proposal and appropriate background information
 - viii. Posters advertising the consultation exercise on site based notice boards and in surrounding villages and libraries
 - ix. Web site links to all documentation
 - x. Active promotion on social media including Facebook and Twitter

- xi. Burnham Beeches and Consultative Group meeting to discuss the consultation outcome.

Consultation results.

20. Thirty four individual or organisational responses to the consultation exercise were received. A breakdown of those 34 responses is shown below: **Appendix 1.**

1.

- Order 1 - 100% support to extend the PSPO for a further three years
- Order 2 – 100% support to extend the PSPO for a further three years
- Order 3 – 94% support to extend the PSPO for a further three years
- Order 4 - 100% support to extend the PSPO for a further three years
- Order 5 – 100% support to extend the PSPO for a further three years

21. The following organisations supported the proposals to extend all 5 current PSPOS for a further three years:

- i. Farnham Royal Parish Council
- ii. Burnham Parish Council
- iii. Police and Crime Commissioner
- iv. The National Trust – owner of neighbouring open spaces that manages a shared audience with Burnham Beeches
- v. The Burnham Beeches and Stoke Common Consultative Group

22. Individual members of the BBSC Consultative Group were consulted on the proposal and a meeting was held with the Group on 18th August where the outcome was discussed. The collated responses from Consultative Group members showed 100% support for all five Orders to be extended for a further three years.

23. The following organisation supported the extension of Orders 1,3,4,5 but not Order 2 (Dogs on leads at all times) for a further three years:

- i. Buckinghamshire Council (BC)

BC asked that consideration be given to reversing the areas covered by Orders two and three. Your committee has previously considered this request (2017) when the Superintendent advised that the suggestion would cause more problems than it solves. As an example, dogs would have to be kept on leads as soon as they arrived on site or when let out of the car. This that would require close monitoring and present challenging enforcement issues.

Options

24. The processes and audiences described in paragraphs 18-23 exceed the statutory requirements and guidance provided by DEFRA. Those consulted are either legally required or are generally recognised as otherwise connected to the site and therefore appropriate to consult.

25. The consultation exercise demonstrates that the consultees support the proposal for all existing PSPOs at Burnham Beeches to be extended for a further three years.

26. Members are asked to consider the following options:

Option 1. Based on the outcome of the recent notification, publication and consultation exercise, extend the existing PSPOs commencing December 1st 2020 and until 30th November 2023.

Or

Option 2. 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 supporting 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 responsibility 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.
- f. In respect of Orders 1 – 5, there are therefore considered to be reasonable grounds to conclude that the activities prohibited by the PSPO's would recur if the restrictions were no longer in effect. It is further considered that this would give rise to detrimental impacts, as outlined above.

Evaluation and Proposals

27. As reported to your Committee on 6 July, the effectiveness of the PSPOs has been continually monitored and the results of the monitoring have been reported annually. The monitoring has indicated a dramatic, long-term, reduction in dog-related incidents. Members are asked to take these findings into account. As the need for the PSPOs is perceived to be ongoing, and as nothing in the responses to the necessary notification, publicity and consultation required under the ABCP Act 2014 indicates otherwise, and as responses support the continuation of the existing PSPOs then **Option 1 is the recommended approach.**

Corporate & Strategic Implications

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

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

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

28. **Table 1** outlines costs to deliver the necessary PSPO notification, publicity and consultation at £8,500 i.e. £1000 less than the estimate provided in the July report to this Committee. All costs are being met from local risk budgets:

Table 1 – Costs.

Activity	Cost
Management time	£1,500
Staff Training (refresher, yet to be delivered)	£1,000
Administration (set up)	£1,000
Advertising costs (Public Notices)	£5,000
Total estimated costs	£8,500

Conclusions

29. It is considered that there are reasonable grounds to conclude that a PSPO will continue to prevent the recurrence of the detrimental activities prohibited by the PSPO's. The results of the formal consultation exercises indicate a high level of support for the City's proposals to extend the existing PSPOs for a further three

years.

Appendices

- Appendix 1 – Collated Consultation Responses
- Map 1.

Background Papers

- July 2020 EFCC 'Decision report' Extension of existing PSPOs at Burnham Beeches – approval to consult
- July 2017 EFCC 'Decision report'. Proposal to extend the use of DCOs as PSPOs at Burnham Beeches.
- September 2014 EFCC 'Decision Report'. Dog Control Order proposals

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