

Committee(s): Epping Forest and Commons Committee	Dated: 14/09/2023
Subject: Proposal to vary and extend the duration of Public Spaces Protection Orders at Burnham Beeches – Outcome of the public consultation process	Public
Which outcomes in the City Corporation’s Corporate Plan does this proposal aim to impact directly?	2,11,12
Does this proposal require extra revenue and/or capital spending?	N
If so, how much?	NA
What is the source of Funding?	NA
Has this Funding Source been agreed with the Chamberlain’s Department?	NA
Report of: Bob Roberts, Interim Executive Director Environment	For Decision
Report author: Geoff Sinclair, Assistant Director, The Commons /Martin Hartup Head Ranger The Commons	

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 further three-year periods from 1st December 2017 and 1st December 2020. They are concerned solely with the reduction of antisocial dog behaviour.

The Executive Director of Environment requested approval to consult on the extension of the 5 PSPOs at Burnham Beeches for a further three years, commencing 1st December 2023, in a report to this Committee dated 16th March 2023. The proposal included a minor amendment to Order 3.

Approval was granted for the Assistant Director to carry out the necessary consultation, publicity and notification which commenced on 17th May 2023 and ended on 30th June 2023. The outcome is that there is very strong support for continuing with the current arrangements, but a further minor amendment to Order 4 is proposed following the comments received.

This report seeks your Committee’s decision concerning the extension of the five existing PSPOs with these two minor variations. 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 – extend the effect of the existing PSPOs at Burnham Beeches for a further three years from 1st December 2023, with two minor modifications.
- 2 Authorise the Comptroller and City Solicitor to make the necessary Orders.
- 3 Delegate authority to the Executive Director of Environment to authorise officers and agents of the City Corporation to issue Fixed Penalty Notices and otherwise act as ‘authorised persons’ in relation to the PSPOs at Burnham Beeches.
- 4 Maintain the fixed penalty for breach of a PSPO at Burnham Beeches at £80 with a reduction to £50 if paid within 10 days.
- 5 Delegate authority to the Executive Director of Environment to update the Dog Management Strategy and the Enforcement Protocol for Burnham Beeches.

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 and again from 1st December 2020. They are concerned solely with the reduction of antisocial dog behaviour.
2. The Executive Director of Environment requested approval to consult on the extension of the five PSPOs at Burnham Beeches for a further three years, commencing 1st December 2023, in a report to this Committee dated 16th March 2023. The proposal included a minor amendment to Order 3, which would allow any authorised person to direct that a dog be put and kept on a lead where reasonably necessary, rather than just an authorised officer of the City Corporation. Members will recall that this was intended to reflect the current arrangements on site whereby external contractors supplement the enforcement activity of the Rangers.
3. Approval was granted for the Assistant Director for The Commons to carry out the necessary consultation, publicity and notification, which commenced on 17th May 2023 and ended on 30th June 2023, a period of 45 days.

Current Position

4. The PSPOs currently operating at Burnham Beeches are shown on **Map 1** and are as follows:

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 (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 dogs previously approved by this Committee is a maximum of 4 and applies to 100% of the site.

5. 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 in the Magistrates' Court to a fine not exceeding level 3 on the standard scale (£1,000).
6. The Dog Management Strategy 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. The Enforcement Protocol ensures a fair and consistent approach to enforcement. The current versions of both of these documents were appended to the previous report in March 2023.

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.
9. Under section 60 of the Anti-social Behavior, 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.
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 enclosure 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. 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 has been reported to this Committee on an annual basis.

Fixed Penalty Notices

13. Under section 68 of the Anti-social Behaviour, Crime and Policing Act 2014, a constable or authorised person may issue a Fixed Penalty Notice (FPN) 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. It is proposed that the authorised persons will continue to be the Burnham Beeches Rangers and authorised external agents who are currently responsible for enforcement of the PSPOs, as per the Enforcement Protocol.
14. It is recommended that the Executive Director of Environment is given delegated authority to authorise officers and external agents as and when necessary, for example following any change of personnel or agency staff. Your Committee has previously granted such a delegation in 2014, 2017 and 2020. However, for the avoidance of doubt, your Committee is asked to confirm this delegation again. The new resolution reflects the restructuring of the Environment Department, combines the separate authorisations given in respect of officers and agents in 2020, and incorporates the full range of actions that may now be carried out by authorised persons.
15. The Rangers, along with all other staff at Burnham Beeches, will receive relevant training to maintain their detailed understanding of legal and operational issues. The same training will be expected of any external agents used for enforcement of the PSPOs.
16. It is also necessary to set the level of the fixed penalty for breach of a PSPO and any discount for early payment. In September 2017 your Committee originally set

the fixed penalty for breach of a PSPO at Burnham Beeches at £80 with a reduction to £50 if paid within 10 days and it is recommended that these amounts are maintained for the time being.

Outcome of the Public Consultation exercise

17. Section 72 of the Anti-social Behaviour, Crime and Policing Act 2014 requires the necessary consultation, publicity and notification to be carried out prior to making a decision.
18. There were 5 elements to the notification and public consultation exercise:
 - i. Farnham Royal Parish Council and Burnham Parish Council were formally notified of the proposal and their opinions sought.
 - ii. Buckinghamshire Council, The Chief of Police for Thames Valley and the Police and Crime Commissioner were engaged and their opinions sought.
 - iii. The Burnham Beeches and Stoke Common Consultative group were engaged and their opinions sought as to the proposal.
 - iv. A wide range of statutory and non-statutory organisations, social activity groups, animal welfare specialists, 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. The necessary publicity and additional methods of engagement included:
 - vi. Public notices in the local press (2 newspapers).
 - vii. Emails to relevant individuals and organisations setting out the proposal and appropriate background information (repeated at the halfway stage of the consultation period as required).
 - viii. Posters advertising the consultation exercise on site based notice boards and in surrounding villages.
 - ix. Website 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. Seventeen individual or organisational responses to the consultation exercise were received. A summary sheet and the full text of each of the responses is included in **Appendix 1**. A breakdown of those responses is also shown below:

Order 1 - 100% support to extend the PSPO for a further three years
Order 2 – 88% support to extend the PSPO for a further three years
Order 3 – 100% support to extend the PSPO for a further three years
Order 4 - 94% support to extend the PSPO for a further three years
Order 5 – 94% 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 Thames Valley Police
 - ii The Burnham Beeches and Stoke Common Consultative Group

- iii Herts Orienteers
- iv Berkshire College of Agriculture

22. Individual members of the BBSC Consultative Group were consulted on the proposal and a meeting was held with the Group on 12th July where the outcome was discussed. Whilst there were some minor differences of opinion about whether the Order 2 (dogs on lead) area should be expanded or reduced, the Consultative Group members ultimately confirmed 100% support for all five Orders to be extended for a further three years.
23. One member of the public expressed a desire to walk their dog off lead in the Order 2 area due to being elderly and finding the Order 3 (dogs on lead by direction) area too hilly. Your Committee considered a request to reverse the two areas in 2017 and 2020 but it is felt that this would cause more problems than it solves. Apart from that, there was full support from the members of the public who responded for the extension of all 5 PSPOs.
24. The Kennel Club provided a generic response rather than commenting on the specific proposals. They state that they strongly welcome 'dogs on lead by direction' Orders. Their response is also considered to be supportive of 'dog fouling' Orders, where sufficient bins are provided and additional education is provided, as at Burnham Beeches.
25. The Kennel Club state that they do not normally oppose 'dog exclusion' Orders in relation to enclosed recreational facilities, etc. which is the case with the small exclusion zone around the café, so this has been recorded as a neutral response. They also state that they can support reasonable 'dogs on lead' Orders, when used in a proportionate and evidence-based way. Officers consider this to be the case here, taking into account the environment of Burnham Beeches and the needs of all users, but as the Kennel Club do not offer a specific view, this has also been recorded as a neutral response. However it should be noted that the current proposal arguably goes beyond the illustrative examples provided by the Kennel Club, and they have previously (in 2017) stated that Order 2 is overly restrictive and cannot be justified within the PSPO framework.
26. Finally, the Kennel Club state that imposing an arbitrary maximum number of dogs that a person can walk is an inappropriate approach to dog control. Whilst officers would argue that the four-dog limit is not arbitrary, but is a longstanding policy that is supported by previous detailed surveys and consultations, and appropriate to the Burnham Beeches environment, this has been recorded as a negative response.

Assistance dogs

27. One additional matter raised by the Kennel Club relates to assistance dogs. Two of the current PSPOs contain exemptions for disabled people. Order 1 (dog fouling) has an exemption for blind people, and physically disabled people in respect of a dog trained by a specified charity. Order 4 (dog exclusion) additionally has an exemption for deaf people, in respect of a dog trained by a specified charity. These provisions date back to the original DCOs, in which the

wording was prescribed. With PSPOs there is more flexibility to provide for additional exemptions, where this is considered to be appropriate.

28. The Kennel Club refer to guidance from the Equality and Human Rights Commission for businesses and service providers to make the point that there are a number of other disabilities under the Equality Act 2010 where an assistance dog may play a role in carrying out a variety of practical tasks or supporting their owner's independence and confidence, and in such cases the assistance dog may be obtained from an alternative source, such as a registered member of Assistance Dogs (UK), or may even be owner trained.
29. It is not considered necessary to make any additional provision in relation to Order 1. In relation to Order 4, the enforcement practice would already be sympathetic in such circumstances. Officers are not aware of any issues arising from the current wording, which already makes provision for reasonable excuse and consent, where appropriate. However, it is acknowledged that additional provision could be made to allow those with any physical or mental disability within the meaning of the Equality Act 2010, who in the reasonable opinion of an authorised person rely upon an assistance dog, to fully access the café facilities with that animal. A minor amendment has therefore been made to the draft of the proposed Order 4 to reflect this.

Options

30. The consultation exercise that has been carried out exceeds the statutory requirements. It demonstrates that the consultees support the proposal for all existing PSPOs at Burnham Beeches to be extended for a further three years. No objection has been received to the previously proposed minor variation to Order 3 and, following the consultation, a further minor variation to Order 4 should be considered.

31. 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 at Burnham Beeches for a further three year period from 1st December 2023, with the two minor amendments to Order 3 and Order 4 as set out in **Appendix 2**.

Or

Option 2. Do nothing.

- a) If Members decide to do nothing, then the PSPOs will expire on 30th November 2023. 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.

- iii. Must not worry or chase birds or animals in and around the ponds.
- 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, proven ineffective and extremely difficult to enforce.
- c) As a result, it may be reasonably assumed that there would be a substantial increase in dog nuisance issues that the PSPOs have effectively helped to manage, with the accompanying negative impacts on other users and the flora and fauna of Burnham Beeches, which is a National Nature Reserve. This option is not recommended.

Proposals

32. As reported to your Committee on 16 March, 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. In respect of Orders 1-5, there are therefore considered to be reasonable grounds to conclude that the detrimental activities prohibited by the PSPOs would recur, or increase in frequency or seriousness, if the restrictions were no longer in effect. As the need for the PSPOs is perceived to be ongoing, and as nothing in the responses to the necessary notification, publicity and consultation indicates otherwise, and as the responses strongly support the continuation of the existing PSPOs then **Option 1 is the recommended approach**. If Members adopt this approach then the Dog Management Strategy and the Enforcement Protocol will need to be updated accordingly.

Key data

27. Summary of PSPO consultation results 2017 – 2023 in **Table 1**

Table 1 – Summary of 2017, 2020 & 2023 consultation results – showing the level of public support for the PSPOs.

PSPO	2017	2020	2023
1. Fouling	95% (2%)	100%	100%
2. On lead areas	57% (32%)	94%	88%
3. On lead on Request area	91% (4%)	100%	100%
4. Dog exclusion area	80% (9%)	100%	94%
5. Maximum number	91% (2%)	100%	94%

(2017 figures in brackets) =% against any proposal in 2017

Corporate & Strategic Implications –

Strategic implications

28. City of London Corporate plan 2018-2023: (2) people enjoy good health and well-being (11) We have clean air, land and water and a thriving and sustainable natural environment; (12) Our spaces are secure, resilient and well maintained.
33. The proposal meets the Natural Environment division's objectives of 'Open Spaces and historic sites are thriving and accessible'.

Financial & Resource implications

34. **Table 2** outline costs to deliver the necessary PSPO notification, publicity and consultation at £5,500 i.e. £2500 less than the estimate provided in the March report to this Committee. All costs will be met from local risk budgets.

Table 2 – Costs.

Activity	Cost
Advertising (Public Notices)	£3000
Management time	£1,500
Administration (set up)	£1,000
Total estimated costs	£5,500

Legal implications

35. Contained within the body of this report.

Risk implications

The introduction of Public Spaces Protection orders at Burnham Beeches is not universally popular and there is always a risk of adverse publicity.

Climate implications

36. None

Security Implications

37. None

Charity Implications

38. Burnham Beeches and Stoke Common is a registered charity (number 23987). Charity law obliges members to ensure that the decision's they take in relation to the charity must be taken in the best interests of the Charity.

Equalities implications

39. The existing PSPOs provide exemptions for people with disabilities and assistance dogs and it is proposed that these arrangements will continue and be expanded in relation to the exclusion area around the café. A test of relevance has been carried out and is included at **Appendix 3**. The Enforcement Protocol also addresses these issues and will be updated to reflect any changes.

Conclusion

40. It is considered that there are reasonable grounds to conclude that extending the duration of the PSPOs will continue to prevent the recurrence of the detrimental activities that they prohibit. 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. It is proposed to make a very minor amendment to Order 3 to assist with enforcement and another very minor amendment to Order 4 to allow more flexibility in relation to assistance dogs.

Appendices

- Map 1.
- Appendix 1 – Collated Consultation Responses
- Appendix 2 – Draft PSPOs to come into force on 1st December 2023
- Appendix 3 – Test of Relevance

Background Papers

- March 2023 EFCC 'Decision report' Extension of existing PSPOs at Burnham Beeches – approval to consult

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