

## **Burnham Beeches**

### **Enforcement Protocol for Public Spaces Protection Orders**

#### **("PSPOs")**

The purpose of this protocol is to establish and promote a standardised approach to PSPO enforcement at Burnham Beeches including the procedure to be followed by those with powers to issue fixed penalties, with guidance as to the circumstances in which they should be issued.

All officers will ensure they defer to this protocol when making enforcement decisions. Application of this protocol should be in conjunction with the Dog Management Strategy (DMS) for Burnham Beeches.

In carrying out any enforcement activity the City of London will abide by, and be informed by, the principles of:

- **Enforcement** - based around firm and fair regulation
- **Proportionality** - degree of the risk of harm caused (precautionary principal)
- **Consistency** - a similar approach in similar cases to achieve similar outcomes within which a degree of discretion is available
- **Transparency** - helping people to comprehend what is required of them to include details of any rights of appeal
- **Targeting** - directing regulatory effort effectively using a risk based approach

Under section 75 of the Anti-social Behaviour, Crime and Policing Act 2014 (ABCPA) the pre-existing Dog Control Orders at Burnham Beeches have effect as if they were PSPOs from 20<sup>th</sup> October 2017. The City of London has resolved to extend their effect for a further three years from 1<sup>st</sup> December 2017. It is an offence under section 67 of the ABCPA not to abide by the requirements of the PSPOs. At Burnham Beeches each of the PSPOs shown below can be enforced by constables and authorised officers – i.e. trained and authorised City Of London Staff (in this case site Rangers) - and Police Community Support Officers accredited under Police Reform Act 2002. **The maximum fine on conviction of any breach of the PSPOs in the Magistrates' Court is level three on the standard scale (currently up to £1000) per offence.**

#### **Description of offences under the PSPOs for Burnham Beeches are:**

- **Order 1** - Failure to remove dog faeces from anywhere at Burnham Beeches.
- **Order 2** - Not keeping a dog on lead (max length 5m) in specified areas.

- **Order 3** - Not putting, and keeping, a dog on a lead (max length 5m) when directed to do so by an authorised officer of the City of London (Ranger) in a specified area.
- **Order 4** - Permitting a dog to enter land from which dogs are excluded. Small specified area around the café.
- **Order 5** - Taking more than four dogs onto land. Applies anywhere on Burnham Beeches.

Under sec. 68 of the ABCPA Fixed penalty notices (referred to as FPNs) can be issued by authorised officers, site Rangers, at Burnham Beeches in relation to the offences listed above. These notices provide a quick, visible and effective way of dealing with the offence under ABCPA and an alternative to prosecution.

A fixed penalty is not a fine. Payment of the penalty by the recipients discharges their liability to prosecution for the offence for which the FPN was issued. It does not constitute an admission of guilt, but removes the possibility of the creation of a criminal conviction.

### **When the powers will be used?**

The Anti-social Behaviour, Crime and Policing Act (ABCPA) 2014 empowers the City of London to prosecute in the Magistrates' court, those that are suspected of an offence against a Public Space Protection Order. As an alternative to prosecution in the Magistrates' Court, the Act gives the power to the City of London to authorise staff to issue fixed penalty notices (FPN's) to alleged offenders as an alternative to prosecution. The collection of FPN payments will be undertaken by District Enforcement Limited on behalf of the City of London. All prosecutions in the Magistrates' Court will be undertaken by the City of London's own Solicitors.

### **When do the powers apply?**

The Public Space Protection Order at Burnham Beeches applies throughout the year, 24 hours a day.

### **Levels of fixed penalty and payment options**

The City of London has set the amount of a Fixed Penalty for each offence against the order it has made at £80. The amount payable shall be reduced to £50 in each instance if paid within ten days of the date of issue of the FPN.

### **Guidance on enforcing all five of the PSPOs at Burnham Beeches including for issuing an FPN**

The City of London will not immediately seek to prosecute/issue a FPN for any PSPO offence witnessed by authorised enforcement officers i.e. it will not adopt a zero tolerance approach to enforcing the PSPOs at Burnham Beeches all breaches will be considered on their individual merits. Anyone

seen contravening any PSPO at Burnham Beeches will be approached and, where reasonably practicable, given the opportunity to put the matter right unless the infringement is so serious that formal enforcement is merited or the individual has persistently infringed the PSPO in the past or the matter simply cannot be put right (e.g. offender has no bag to clear up when a dog fouls).

**1: Offence - a person in charge of a dog is seen to fail to remove faeces anywhere on Burnham Beeches.**

Exceptions – a person will not be guilty of an offence if that person:

- Is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948 or
- Has a disability which affects his mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects, **in respect of a dog trained by a prescribed charity\* and upon which he relies for assistance, or**
- Has a reasonable excuse for failing to clear up – all breaches will be considered on their individual merits, if in any doubt as to validity of any reasonable excuse officers will issue an FPN and advise recipients of the appeal process if they feel they may have a reasonable excuse, or
- Has permission of the City of London, as landowner, in writing from the Superintendent of The Commons, not to clear up the dog faeces.

**Examples of things that are not considered to constitute a “reasonable excuse”:**

- Unaware dog had fouled
- Having no means to clear up the foul (i.e. no bag)
- Being unaware the PSPO is in place
- Not being the owner of the dog but simply walking it on behalf of another person

**2: Offence - A person in charge of a dog allows it to be off lead in the dogs on lead areas or on a lead longer than 5m in length.**

Exceptions – a person is not guilty of an offence if that person:

- has a reasonable excuse for not having the dog on a lead – if in any doubt as to validity of any reasonable excuse, officers will issue an FPN and advise recipients of the appeal process if they feel they have a reasonable excuse, or
- has permission of City of London, as land owner, in writing from the Superintendent of The Commons, not to have a dog on a lead.

**Examples of things that are not considered to constitute a “reasonable excuse”:**

- Not having a lead with them to put the dog on
- Being unaware the PSPO is in place
- Not being the owner of the dog but simply walking it on behalf of another person

**3: Offence - a person in charge of a dog does not comply with a direction given to him by a Ranger to put his dog on a lead of not more than 5m in length if reasonably necessary to prevent nuisance or behaviour by the dog to cause annoyance or disturbance to any other person or the worrying or disturbance of any animal or bird.**

In effect we will ask for dogs to be put on a lead if they are not under effective control as defined by the current dog code – i.e. when off a lead a dog must be in the owner's sight at all times, return when called and not be allowed to disturb/chase/worry any other visitors, wildlife or livestock.

Exceptions – a person is not guilty of an offence if that person:

- has a reasonable excuse for not having the dog on a lead – if in any doubt as to validity of any reasonable excuse, officers will issue an FPN and advise recipients of the appeal process if they feel they have a reasonable excuse, or
- has permission of City of London, as landowner, in writing from the Superintendent of The Commons, not to have a dog on a lead.

**Examples of things that are not considered to constitute a “reasonable excuse”:**

- Not having a lead with them to put the dog on
- Being unaware the PSPO is in place
- Not being the owner of the dog but simply walking it for another person

**4: Offence - a dog is taken into the small dog exclusion zone at the café (i.e. the area where dogs are excluded).**

Exceptions – a person is not guilty of an offence if that person:

- is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948: or
- is deaf, in respect of a dog trained by Hearing Dogs for Deaf People (registered charity number 293358) and upon which he relies for assistance; or

- has a disability which affects their mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects, **in respect of a dog trained by a prescribed charity\* and upon which he relies for assistance, or**
- has a reasonable excuse for bringing the dog into the exclusion zone – if in any doubt as to validity of any reasonable excuse, officers will issue an FPN and advise recipients of the appeal process if they feel they have a reasonable excuse, or
- has permission of City of London, as land owner, in writing from the Superintendent of The Commons, to bring the dog into the exclusion zone.

**Examples of things that are not considered to constitute a “reasonable excuse”:**

- Unaware that dogs are not allowed in this area – (the only way into this area is through gates which have all signs on them).
- Being unaware the PSPO is in place
- Having no lead to tie it up outside
- Only popping in for a coffee/food etc.
- Not being the owner of the dog but simply walking it for another person

**5: Offence - an individual is walking five or more dogs anywhere at Burnham Beeches.**

Exceptions – a person is not guilty of an offence if that person:

- has a reasonable excuse for walking five or more dogs – if in any doubt as to validity of any reasonable excuse, officers will issue an FPN and advise recipients of the appeal process if they feel they have a reasonable excuse, or
- has permission of City of London, as land owner, in writing from the Superintendent of The Commons, to walk five or more dogs at Burnham Beeches.

**Examples of things that are not considered to constitute a “reasonable excuse”:**

- Not being aware the PSPO is in place
- Not being the owner of the dogs but simply walking them on behalf of another person

## **Visitors with disabilities and Assistance Dogs**

*\* In relation to the PSPOs at Burnham Beeches each of the following is a prescribed charity - Dogs for the Disabled (registered charity number 700454), Support Dogs (registered charity number 1088281, Canine Partners for Independence (registered charity number 803680)*

In addition to the prescribed charity provision above, Rangers will not normally seek to take formal action against anyone who has a disability which prevents that individual from being able to physically comply with the requirements of a PSPO. All breaches of PSPO will be considered on their individual merits and advice on how to comply, will be given where appropriate.

## **Working dogs**

Working dogs may be exempt from a PSPO but this will only apply to those such as Police dogs & Search and Rescue dogs actively working on site. The exemption does not apply to dogs that may be of a working breed or classified as working when away from Burnham Beeches, for example a Sheepdog, gundog (retriever pointer etc.) at any time, or Police and search and rescue dogs when such dogs are simply being exercised at the site.

## **How will the powers will be used?**

The City will not operate a zero tolerance to PSPO infringement at Burnham Beeches, all breaches will be considered on their individual merits. Where a visitor is clearly unfamiliar with the site and complies with a Ranger's request to carry out an action, pick up/remove faeces, put dog on lead etc. no further action will be taken.

If a request for an individual to comply with the PSPO is recorded two times, or they are known to be a regular visitor, and as such very familiar with the PSPOs requirements, they will receive a formal warning and will no longer be given the opportunity to put matters right should they commit an offence in the future and an FPN will be issued or the /matter prosecuted if an FPN is not accepted or the matter is so serious so as to merit prosecution.

Rangers will record details of all instances where someone is approached and asked to comply with the PSPOs.

Where a visitor refuses or is unable to comply with any request to abide by any PSPO, an FPN will normally be issued or evidence recorded for formal warning/prosecution where an FPN is not an appropriate way forward.

Where a Ranger deals with an incident where an FPN would normally be issued but where they don't have an FPN with them at the time, they will collect all evidence/information they would need to issue an FPN and then issue by post.

An FPN will not be an appropriate way forward where the matter is so serious so as to merit prosecution and/or where the offender has been issued a number of FPNs previously.

The City of London will also have due regard to its obligations when the offence is committed by a juvenile i.e. under the age of 17.

### **'Appeals' Process**

Though not a statutory requirement, the enforcement procedures for the PSPO at Burnham Beeches will include a process to allow the opportunity for anyone issued an FPN, who believes that they meet one of the exceptions, to make representations as to why they should not have been issued an FPN.

Should anyone wish to 'appeal' against the issuing of an FPN they must make representations in writing or by email within 14 days of issue to PSPO appeals, PO Box 3487, Stafford, ST16 9PR or [appeals@district-enforcement.co.uk](mailto:appeals@district-enforcement.co.uk).

Appeals will be granted where there is evidence of an exemption applicable to the offence committed. Appeals based on a 'reasonable excuse' will be dealt with on a case by case basis but will not include:

- Not knowing the PSPO is in place was in force
- Not my dog
- Was going to come back to remove faeces
- Didn't have any bags
- Didn't have a lead with me

Appeals will also be allowed where appellant has permission of the City Of London, in writing from the Superintendent of The Commons.

Where any appeal is refused the appellant will be notified, and of the reasons for refusal, in writing/or by email and given a further 14 days to pay the FPN from the date of refusal and including being able to pay the reduced rate within 10 days. The appellant will also be notified in writing/by email where an appeal is upheld. All adjudications will be made and notified within 28 days of receipt.

The decision to allow or refuse an appeal will ultimately be determined by the Superintendent of The Commons.

### **What is a serious incident?**

There could be many examples, but generally it is where as a result of not abiding by a PSPO, there has been a more serious incident that would otherwise have been avoided by the dog walker complying with the PSPO. For example; in an area where dogs must be kept on a lead by failing to keep their dog on lead an owner allows their dog to attack another dog/wildlife /livestock or even another visitor. In such a case it would not be

appropriate to issue an FPN but to deal with all such matters by prosecution – and gather evidence accordingly.

### **Collection of personal Data**

#### **Burnham Beeches – Public Space Protection Order Retention Policy**

Name address and Additional details will be requested by the authorised officer when issuing an FPN. Under the Burnham Beeches byelaws a person can be guilty of obstructing an officer by failing to provide their name and address.

The enforcement of Public Space Protection Orders at Burnham Beeches requires authorised officers to collect and process personal information about identified individuals found to be in breach of these orders.

In accordance with principle five of the Data Protection Act 1998, this information will only be retained as long as necessary in relation to the enforcement of Public Space Protection Orders.

### **Active Review**

This document will be reviewed and updated every six months – to reflect as required any further site specific guidance required as enforcement action is carried out at Burnham Beeches.