

Committee(s): Epping Forest and Commons Committee	Dated: 16/03/2023
Subject: Extension of existing PSPOs at Burnham Beeches	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: Juliemma McLoughlin	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 concern themselves solely with the reduction of antisocial dog behaviour on Burnham Beeches.

Appendix 1 provides a review of the effectiveness of the DCOs/PSPOs for the period 1st April 2015 – 31st January 2023. It indicates that the PSPOs have 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.

PSPOs need to be renewed every three years and the existing PSPOs at Burnham Beeches must be extended by 30th November 2023 if they are to continue in force from 1st December 2023.

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**.

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

Recommendation(s)

Members are asked to:

- Agree Option 3 i.e. Authorise the Assistant Director 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 2023.

Main Report

Background

1. 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.
2. 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.
3. 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 following extensive public consultation your Committee resolved that the five PSPOs at Burnham Beeches should continue in force for a further three-year period from 1st December 2017 and subsequently again from 1st December 2020.
4. The aim of the PSPOs at Burnham Beeches is to deal effectively with dog-related issues, that were not improved by the adoption and promotion, over many years, of a voluntary dog walking code, 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

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

6. Monitoring the effectiveness of PSPOs (and formerly DCOs) since their introduction in 2014 indicates that they have achieved a dramatic reduction in dog-related incidents. **Appendix 1.**
7. The existing PSPOs at Burnham Beeches are due to expire on 30th November 2023. If they are to be extended for 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 Anti-social Behaviour, Crime and Policing Act 2014. Useful guidance on the statutory requirements can be found in the Local Government Association guide at **Appendix 2.**
8. 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.
9. 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.
10. 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 2020 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 to PSPO enforcement. **Appendix 4.**

Relevant Considerations

11. 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.
12. 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.
13. 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.
14. DEFRA guidance also states that local authorities should look to provide other suitable dog walking areas in the locality, where restrictions are in place. However, dog walkers are not banned from the ‘dogs on leads’ area, and are only excluded from a very for small area around the Café. In addition, the City Corporation still provides 220 acres at Burnham Beeches and a further 200 acres at Stoke Common where dogs can be walked ‘off lead’. This more than adequately meets both the guidance and animal welfare requirements.

Options

15. Members are asked to consider the following three options:

Option 1: 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 proved 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. This option is not recommended.

Option 2: Consider varying the existing PSPOs.

- a) There has been good support for and compliance with the existing PSPOs over the last three years. Monitoring results indicate that the existing PSPOs are effective at reducing antisocial dog behaviours. As such, there is no evidence to support the need to amend the existing PSPOs.
- b) The necessary consultation would have to be delayed to allow time to identify and incorporate any amendment to the existing PSPOs. All site signage would have to be reviewed and potentially replaced at additional cost. 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 PSPOs at Burnham Beeches for a further three years, then the Assistant Director should be authorised to commence the necessary consultation, publicity and notification as set out below. The results of the public consultation will be presented to your Committee in September, prior to a final decision being made.
- b) This option allows for the current PSPOs to be maintained and continue the marked improvement in dog-related behaviour at Burnham Beeches since 2014.
- c) 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 behaviours were managed via the voluntary dog code.
- d) The only very minor amendment that is proposed is to change the references to "an authorised officer of the Authority" in Order 3 to "an authorised person", and to define this as "a person authorised by the Authority for the purpose of giving directions under this Order". This

would enable authorised agents, as well as City Corporation employees, to direct that a dog be put on a lead where reasonably necessary. The existing wording is a legacy from the original DCOs, in which the text was prescribed. However, the proposed amendment is consistent with the current legislation, in which an authorised person may take other enforcement action, such as issuing fixed penalty notices, and reflects the current arrangements on site whereby external contractors supplement the enforcement activity of the Rangers. **This option is recommended.**

Proposals

16. 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
17. The relevant parish councils and the unitary council must also be notified of the proposed extension.
18. The full list of consultees, including community representatives was developed for the 2017 & 2020 PSPO consultation process. It is proposed to update the 2020 list of consultees and use it to guide the 2023 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.
19. Any proposal to extend a PSPO must also be publicised. As best practice, the guidance states that order-making authorities should where possible seek to advertise details of a PSPO consultation in a local newspaper, or investigate a suitable alternative to reach those most affected.
20. The proposed consultation period commences 17th May 2023 and ends on 30th June 2023 providing a total of 45 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.
21. **Table 1** 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 2023.
22. Members are asked to consider **Step 2** and should the recommendation of this report be approved, the Assistant Director will follow **Steps 3-7** (Step 1 having been previously achieved in February 2023) prior to a further decision report concerning Steps 8-10.

Table 1

EFCC Approval to Consult		
Step 1.	BBSCCG. Inform of proposal to carry out the necessary consultation, publicity and notification in 2023 subject to EFCC approval	Completed at February 2023 meeting
Step 2.	EFCC report seeking approval to consult on extension of PSPOs - for Decision.	March 2023
Necessary Consultation.		
Step 3.	Visitor comments.	17 May – 30 June 2023
Step 4.	Other external audiences as recommended in the guidance. (For comment. See paragraph 18).	17 May – 30 June 2023
Step 5.	Formal Consultee representations (notification and comment - see paragraphs 16 and 17).	17 May – 30 June 2023
Step 6.	BBSCCG on site meeting	July 2023
Step 7.	EFCC to consider 'approval to extend' PSPOs for 3 years, Confirm FPN value. Decision report.	14 September 2023
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	15 September - 30 November 2023
Step 9.	PSPO's extension (If approved)	1 December 2023 onwards
Step 10.	Deliver/ Monitor as approved	1 December 2023 onwards

Key Data

23. Since the introduction of DCOs/PSPOs, dog-related incidents have reduced, including a reduction in dog fouling of up to 96.9% in 'on lead' areas and 66.4% in the 'off lead' (on lead on request) area – **Appendix 1**.

24. A Summary of 2017 and 2020 consultation results is shown in **Table 2** – see also **Appendix 3**.

Table 2 – Summary of 2017 & 2020 consultation results - showing the levels of public support for the PSPOs

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

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

Corporate & Strategic Implications –

Strategic implications

25. 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.

26. The proposal meets the Natural Environment division's objectives of 'Open Spaces and historic sites are thriving and accessible'.

Financial & Resource implications

27. The cost of the PSPO consultation and enforcement process is estimated at £8,000 including officer time, consultation, advertising and notification costs. All costs will be met from local risk budgets as shown in **Table 3** below:

Table 3 – Estimate of delivery costs.

Activity	Cost
Advertising	£4,000
Management time (estimated based on 2020)	£2,500
Administration (set up, and notification based on 2020)	£1,500
Total estimated costs	£8000

Legal implications

28. Contained within the body of this report.

Risk implications

29. 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

30. None

Security Implications

31. None

Charity Implications

32. 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

33. The existing PSPOs provide exemptions for people with disabilities and assistance dogs in appropriate circumstances and it is proposed that these arrangements will continue. The Enforcement Protocol also addresses these issues.

Conclusion

34. The PSPOs (and the previous DCOs) at Burnham Beeches have reduced dog fouling by up to 96.9% and significantly reduced the level of other dog nuisance issues over the last 8 years.

35. The existing PSPOs allow officers to enforce certain behaviours to the benefit of the majority of site visitors and wildlife within the NNR.

36. It is recommended that the Assistant Director be permitted to consult on extending the PSPOs applying to Burnham Beechers beyond 30 November 2023.

Appendices

- Appendix 1. Review of PSPO effectiveness 2015 - 2022
- Appendix 2. LGA Guidance
- Appendix 3. Burnham Beeches Dog Management Strategy 2020
- Appendix 4. Enforcement Protocol
- Appendix 5. Existing PSPOs

Background Papers

September 2020 - EFCC 'Decision Report'. Proposal to extend the use of Public Spaces Protection Orders at Burnham Beeches – Outcome of the public consultation process.

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