

CITY OF WOLVERHAMPTON COUNCIL	Cabinet 24 May 2023
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Report title	Public Spaces Protection Order 2023 – Dog Control	
Decision designation	AMBER	
Cabinet member with lead responsibility	City Environment and Climate Change	
Key decision	Yes	
In forward plan	Yes	
Wards affected	All Wards	
Accountable Director	John Roseblade, Director of Resident Services	
Originating service	Resident Services	
Accountable employee	Shaun Walker	Service Lead
	Tel	01902 554470
	Email	shaun.walker@wolverhampton.gov.uk
Report to be/has been considered by	City Environment and Climate Change Leadership Team	18 April 2023

Recommendations for decision:

Cabinet is recommended to:

1. Approve the renewal of the Public Spaces Protection Order (PSPO) – Dog Control.
2. Approve the recommendations for a city-wide PSPO, subject to the mandatory six-week legal challenge period allowed, which includes the same proposals as the previous order and additional measures.

1.0 Purpose

- 1.1 To seek approval for the PSPO to be renewed with the same restrictions as the previous order that commenced 1 October 2020.
- 1.2 To seek approval for the new PSPO to include additional restrictions. This order is sought due to the powers extended to Local Authorities from the Anti-social Behaviour, Crime and Policing Act 2014.

2.0 Background

- 2.1 On 19 July 2017 Cabinet authorised the introduction of a city-wide PSPO which introduced several dog control measures. The PSPO replaced three separate Dog Control Orders that had existed in Wolverhampton since 2007. This was approved for a three -year continuation by Cabinet on 2 September 2020 and will end 30 September 2023.
- 2.2 The proposals directly support the Council Plan by helping to provide healthy and inclusive communities.

3.0 The current PSPO - Dog Control

- 3.1 The current PSPO comprises six sections - four requirements and two prohibitions.
- 3.2 The first **requirement** is for those in control of dogs to keep their dogs on a lead when near to a major road in Wolverhampton. The order then lists the ring road and 10 other "A" roads (being all the A roads) which pass through Wolverhampton. This requirement is based on public safety and the welfare of dogs being an attempt to prevent stray or uncontrolled dogs getting loose on the main road.
- 3.3 The second **requirement** relates specifically to Northycote Farm and is an identical replacement for the original 2007 Order. Those in control of dogs are to keep their dogs on a lead at all times when walking in designated areas at the farm. Also, dogs are prohibited from certain areas to protect livestock, but they are allowed to run off lead elsewhere. The proposal for 2023 – 2026 remains largely the same with no net loss of land where dogs can run freely.
- 3.4 The third **requirement** is for those in control of dogs to keep their dogs on a lead within 100 metre radius of any school or academy building where such educational institute caters for pupils up to the age of 16. The educational institutes are listed by reference to a list of 0 -16 years educational institutions in Wolverhampton which the authority maintains and updates from time to time. This prohibition is required to prevent out of control dogs biting or frightening children as sight of lots of children going to or leaving school at the same time can cause some dogs to get over excited.
- 3.5 The fourth **requirement** is for those in control of dogs to put their dogs on a lead if instructed to do so by a Police Officer (including Police Community Support Officer) or Council Officers producing identification (ID). This measure is designed to control dogs that are loose and are deemed dangerous or causing a nuisance.

- 3.6 Regarding the **prohibitions**, there is a prohibition against allowing a dog to foul in public areas in the city and failing to remove the faeces.
- 3.7 Dogs can be a nuisance on tennis courts and in children's play areas. Therefore, there is a specific list of tennis courts and play areas from where dogs will be banned altogether. There is still a very large amount of public space throughout the city where dogs can be exercised, and if challenged, on that basis, it would be argued such prohibition is proportionate. Appropriate signage has been installed and will remain in place clearly marking play areas and tennis courts from where dogs are prohibited. Such signage will periodically be monitored and refreshed where necessary.
- 3.8 The above prohibitions and requirements do not apply to those in control of assistance dogs. For more information see section 11.

4.0 New Proposals for 2023 – 2026 following consultation

- 4.1 Further details on each of the new proposals are contained within appendix 1 and are summarised below for ease of reference. **It is important to note that all the measures are temporary in nature and will require ongoing monitoring during the period that the PSPO exists.**
- 4.2 As mentioned in paragraph 3.3 above, it is proposed that Cabinet implements a renewed dog control PSPO which varies the restrictions at the Council owned site known as Northycote Farm. Such changes, detailed below, have been proposed as a result of consultation with the Council's Parks Landscape and Countryside Service including several site visits. The current status of the fields is shown on page 6 of the [current PSPO](#). With reference to varying the terms of the PSPO in this regard, analysis of the consultation exercise determined: **it is recommended that Cabinet implements a new PSPO which contains the following modifications so far as the PSPO's effect at Northycote Farm is concerned:**
- I The old events field will move from status of dogs on leads to no dogs.
 - ii The overflow field will move from dogs allowed on leads to dogs allowed to run freely which will result in a slight net gain of space where dogs can run free.
 - iii All footpaths will allow dogs on leads and these will be clearly marked on the plans appended to the new PSPO.
 - iv An area adjacent to the brook will allow easy and safe access for dogs off lead to drink and play without endangering other natural habitats adjacent to the brook.
- 4.3 As part of the consultation exercise into renewal and variation of the PSPO, consultation was undertaken regarding a new restriction prohibiting dogs in water features or facilities in council controlled and maintained areas such as Parks and Open Spaces, Town Centres, Nature Reserves and Country Parks. This will include formal features, such as ornamental fountains, drinking fountains and ponds, features designated for children's play such as pools and splash pads as well as natural ponds designated for wildlife habitat etc. This order will include any sites which are subsequently transferred to the authority as part of any Land Transfer Agreement and any other water bodies at sites not listed below. This restriction, if implemented, would not limit dogs' access to canal water where this is allowed by the Canal and River Trust.

- 4.4 The Council's Parks Landscape and Countryside service were consulted before introducing this proposal. The Service commented that nesting birds can be inadvertently disturbed and their nests damaged by dogs fetching sticks and the like. It is illegal to disturb nesting birds, though it is appreciated the majority of dog walkers would not deliberately allow this. Also, the Council is trying to encourage and attract endangered species such as Crested Newts and improve wildlife habitat. On the whole most of the Council's natural pools are there to increase biodiversity and to allow safe refuge for wildlife which the Council wishes to protect as far as possible. Additionally, this new measure would reduce the likelihood of accidents involving pets and their owners. Analysis of the consultation exercise determined this proposal was supported. **Proposal following a review of the consultation: Recommendation to Cabinet to Implement this restriction as part of the new (varied) PSPO.**
- 4.5 As part of the consultation exercise into renewal and variation of the PSPO, consultation was undertaken regarding a new requirement for dogs to be kept on a lead in Council operated cemeteries. Analysis of the consultation exercise determined this proposal was supported. **Proposal following a review of the consultation: Recommendation to Cabinet to Implement this requirement as part of the new (varied) PSPO.**
- 4.6 As part of the consultation exercise into renewal and variation of the PSPO, consultation was undertaken regarding a new requirement for a person in charge of a dog on public land to be able to produce on the request of an authorised officer suitable and unused means of removing dog faeces from the ground. Anyone who fails to comply with this requirement shall be guilty of an offence if they are unable to produce suitable **and unused** means of removing dog faeces from the ground when asked to do so by an authorised officer. The receptacle / bags must be disposable, and this requirement is unaffected by whether the dog has recently defecated. Exceptions to this proposal are:
- i That person has a reasonable excuse for failing to do so; or
 - ii The owner/occupier or other person or authority having control of the land has consented (generally or specifically) to that person failing to do so
- 4.7 Analysis of the consultation exercise determined this proposal was supported. **Proposal following a review of the consultation: Recommendation to Cabinet to Implement this requirement as part of the new (varied) PSPO.**
- 4.8 As part of the consultation exercise into renewal and variation of the PSPO, consultation was undertaken regarding a new requirement for a requirement for anyone in control of a dog on public land to provide name and address details when requested to do so by an authorised officer. Analysis of the consultation exercise, determined this proposal was supported **Proposal following a review of the consultation: Recommendation to Cabinet to Implement this requirement as part of the new (varied) PSPO.**
- 5.0 Enforcement**
- 5.1 Prior to the new measures becoming enforceable on 1 October 2023 a campaign will be run to raise awareness. All the PSPO measures will then be enforced by a combination of our enforcement partner Waste Investigations Support and Enforcement (WISE) and in-house staff.

6.0 Consultation

- 6.1 Pursuant to section 72 of the Anti-Social Behaviour, Crime and Policing Act 2014, before making, varying, or extending a Public Spaces Protection Order the local authority must carry out necessary consultation. Such consultation must include West Midlands Police and the West Midlands Police and Crime Commissioner. Also, relevant community representatives should be consulted and the owner or occupier of land within any restricted area. The consultation commenced 26 January 2023 for a period of 12 weeks. The full results are shown in Appendix 2.
- 6.2 All statutory consultation obligations have been met and no adverse comments that would contradict the proposals above have been received. The response by the Kennel Club and Dogs Trust were largely supportive so long as sufficient areas across Wolverhampton remained available for dogs to exercise. All the major parks across Wolverhampton allow dogs off – lead as do several miles of canal paths.
- 6.3 There was appropriate consultation prior to the original PSPO in 2017 and again in 2020 and on both occasions the current PSPO provisions were strongly supported. A comparison between the views in 2017, 2020 and 2023 are shown in the Table 1 below:
- 6.4 Table 1: Summary and comparison of consultation:

Question asked:	Of the people that expressed a view the following agreed or strongly agreed In 2017 Sample size 363	Of the people that expressed a view the following agreed or strongly agreed In 2020 Sample size 222	Of the people that expressed a view the following agreed or strongly agreed In 2023 Sample size 664
Dogs be kept on a lead at all times when on footpaths near the major arterial roads in the City of Wolverhampton Council area.	97%	91%	94%
Dogs to be kept on a lead on land at Northcote Farm apart from the areas where they can run free or are prohibited according to the coloured plan.	71%	83%	60%

Dogs to be kept on a lead at all times within 100 metre radius of the curtilage of any school in the City of Wolverhampton Council area that teachers up to the age of 16.	87%	88%	88%
Those in control of dogs in the City of Wolverhampton Council area immediately put dogs for which they are responsible on a lead at the instruction of any Police Officer, PCSO or Council officer (showing identification).	92%	92%	95%
It will be an offence to allow any dog in your control to foul on any public footpath or in any public place within the City of Wolverhampton Council area and failing to remove the faecal matter immediately.	98%	91%	95%
It will be an offence to allow any dog to enter a fenced children's play area or tennis court.	92% overall	89% overall	90% play areas 81% tennis courts
NEW MEASURES PROPOSED			
An offence to allow dogs in water features or facilities in authority controlled and maintained areas such as Parks and Open Spaces, Town	N/A	N/A	57%

Centres, Nature Reserves and Country Parks etc.			
Dogs to be kept on a lead in Council operated cemeteries.	N/A	N/A	95%
A requirement to provide name and address details when requested to do so by an authorised officer.	N/A	N/A	80%
An offence to be in charge of a dog on public land without means of faeces collection and disposal.	N/A	N/A	91%

7.0 Evaluation of alternative options

- 7.1 **Option 1:** Extension of the PSPO in its current form. This is relatively straightforward and the existing control measures continue to have strong support within the community. However, this option would fail to embrace new opportunities to create changes that are deemed reasonable, proportionate and appear well supported by the wider community in Wolverhampton.
- 7.2 **Option 2:** To extend and vary the PSPO as outlined above. The longer 12-week consultation period has demonstrated strong support for the additional controls.
- 7.3 **Option 3:** To allow the PSPO to lapse without renewal in October 2023. This would be the least favourable option and would undermine the Council's Our City:Our Plan set out in 2.2 above.

8.0 Reasons for decision

- 8.1 For the reasons outlined in section 7, Option 2 is the preferred option.

9.0 Financial implications

- 9.1 The cost of the statutory notice (advertisement in local press), consultation and signage will be met from existing budgets within Environmental Services. Breach of PSPO prohibitions can result in fixed penalty notices (FPNs) being issued by authorised Council Officers or other persons designated by the Council. A penalty charge of £80 will be applicable in these circumstances. Experience to date shows that the PSPO will generate very little income (under £200 per year) as the main focus is to deter anti-social behaviour (ASB) or follow through with enforcement against perpetrators of ASB.

[SB/04052023/Z]

10.0 Legal implications

- 10.1 The Anti-social Behaviour, Crime and Policing Act 2014 (“the Act”) came into effect on 20 October 2014 and Section 59 of The Act gives local authorities the power to make PSPOs which are intended to deal with Anti-social Behaviour and nuisance in a particular area that is detrimental to the local community’s quality of life by imposing conditions (requirements and/or restrictions) on the use of that area.
- 10.2 Before making, varying or extending a PSPO, local authorities must consult with the local police (section 72(3) and 72(4) of the Act). Formal consultation was held with West Midlands Police and the Police and Crime Commissioner on this matter during the 12-week consultation period that ran from January to April 2023. West Midlands Police support the proposed PSPO in the form presented.
- 10.3 The Act also stipulates that councils must consult with the local community on any proposed PSPO. Consultation opportunities have been widely publicised across the city resulting in a response of 664 which far exceeds the response rate in 2017 (363) and 2020 (222).
- 10.4 Pursuant to section 66 of the Act, anyone who lives in or regularly works in or visits the area to which the PSPO applies (or would apply if implemented) has the right to challenge a PSPO in the High Court within six weeks of issue. The PSPO will be publicised locally prior to it coming into force should Cabinet be minded to extend and vary the PSPO in the terms set out in this report.
- 10.5 Section 67 of the Act makes it an offence for anyone, without reasonable excuse, to do anything s/he is prohibited from doing by virtue of the PSPO. Furthermore, it is an offence for anyone, without reasonable excuse, to fail to comply with a requirement in the PSPO. Section 67 of the Act specifies that anyone found guilty of an offence can be fined up to £1,000 by the Magistrates’ Court. Section 68 of the Act provides that, in the alternative, a constable or an officer of the Local Authority authorised in accordance with the Council’s Constitution, may serve a fixed penalty notice (FPN). The FPN would be served on those in alleged breach offering them the opportunity to discharge liability by payment of Fixed Penalty Notice. The amount is currently set at £80 in Wolverhampton (the maximum being £100).
- 10.6 Section 61 of the Act makes provision to review an active PSPO and allows variation (including removal or addition of any requirements or restrictions the local authority deems appropriate) based upon the review findings. Furthermore, pursuant to section 60 of the Act, the maximum duration of a PSPO is three years. Thus, if the recommendations in this report are adopted by Cabinet, it is recommended that a full review prior to its expiry in October 2026 would be appropriate followed by appropriate consultation if such review determined extension or variation of the PSPO was warranted at that point.
- 10.7 The prohibitions and requirements of a PSPO need to be proportionate to the nuisance/mischief they seek to prevent. In the event of any challenge, the Council would respectfully submit that careful consideration has been given to ensuring the varied PSPO is proportionate and only goes so far as is necessary to achieve its

desired effect. By way of illustration, limiting the requirements to A roads (not “B” roads), and educational institutions for pupils 0 to 16 not beyond 16, the Council would argue demonstrates proportionality.

[AS/15052023/Q]

11.0 Equalities implications

- 11.1 In forming these recommendations, the Equality and Human Rights Commission’s guidance on exemptions for those who rely on assistance dogs has been followed.
- 11.2 In keeping with this guidance, the Council will allow for some flexibility when considering whether a disabled person’s dog is acting as an assistance dog. The PSPO will clearly state the following:

Nothing in this Order shall apply to a person who –

- is registered as a blind person on 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 physical or mental impairment which has a substantial and long-term adverse effect on the ability to carry out normal day-to-day activities, in respect of a dog trained by any current or future members of Assistance Dogs UK or any other charity registered in the UK with a purpose of training assistance dogs and upon which he relies for assistance
- has a physical or mental impairment which has a substantial and long-term adverse effect on the ability to carry out normal day-to-day activities and in the reasonable opinion of the Council that person relies upon the assistance of the dog in connection with their disability
- The term “Assistance Dog” shall mean a dog which has been trained to assist a person with a disability.
- The expression “disability” shall have the meaning prescribed in section 6 of the Equality Act 2010 or as may be defined in any subsequent amendment or re-enactment of that legislation.

12.0 All other implications

- 12.1 The proposals would have a positive environmental impact by reducing the hazards associated with dog fouling. Requiring dogs causing a nuisance to be kept under control around the major arterial traffic routes in the city and in and around play areas, tennis courts and schools, would abate the actual and likely nuisance caused by out-of-control dogs and make the environment throughout the city feel safer and more welcoming.
- 12.2 The PSPO will have a positive impact by preventing the possible spread of infections from dogs to humans – especially children – from faeces. It will also help reduce stress

and physical harm to humans and other animals from dogs that are a nuisance or a danger. Clean play areas and tennis courts will encourage their use.

13.0 Schedule of background papers

13.1 [Current PSPO](#)

14.0 Appendices

14.1 Appendix 1: Summary of main new proposals for PSPO 2023 – 2026

14.2 Appendix 2: Consultation Results 2023