	<b>Recordable Decision Report For Resident Services</b>
	<b>Report of Peter Gadsdon, Corporate Director for Partnerships, Housing &amp; Resident Services</b>
	<b>Date of Decision: 7 March 2025</b>
<b>Report Title</b> Review of the Public Spaces Protection Order relating to Paddington Old Cemetery – Decision Report	

<b>Wards Affected:</b>	Queens Park
<b>Key or Non-Key Decision:</b>	Non-Key Decision
<b>Open or Part/Fully Exempt:</b> <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
<b>No. of Appendices:</b>	1. Review Report & Appendices 2. Consultation Analysis Report & Appendices  3. Appendix 1: Current PSPO Order 4. Appendix 2: Varied PSPO Order 5. Appendix 3: Options Appraisal 6. Appendix 4: Equalities Impact Assessment
<b>Background Papers:</b>	None
<b>Contact Officer(s):</b> <small>(Name, Title, Contact Details)</small>	Thomas Cattermole, Director of Resident Services, <a href="mailto:thomas.cattermole@brent.gov.uk">thomas.cattermole@brent.gov.uk</a>

## 1.0 Purpose of the Report

- 1.1. This report sets out the considerations surrounding dog behaviour in Paddington Old Cemetery (POC) after having regard to the consultation analysis and related Appendices, in addition to a range of additional evidence, including Brent officer accounts, site visits and video recordings. It addresses the considerations that have been made in order to address the complaints about dog behaviour and provide a proportionate and balanced decision that impacts all POC cemetery users.

## 2.0 Recommendations

- 2.1. That the Corporate Director for Partnerships Housing & Resident Services in consultation with the Lead Cabinet Member for Safer Communities, Jobs & Skills:

- a) approves the variation of prohibition 23 of the Parks, Open Spaces, Cemeteries and Graveyard Public Spaces Protection Order restrictions (1-6 and 19-31) as set out in paragraph 5.9.3 of this report, following public consultation. A copy of the order as varied is attached in Appendix 2.
- b) that the remaining prohibitions of the Parks, open spaces, cemeteries and graveyard Public Spaces Protection Order and the existing boundaries remain unchanged.
- c) that the variation of the Parks, Open Spaces, Cemeteries and Graveyard Public Spaces Protection Order is effective from Monday 10th March 2025 from 00:01hrs (24-hour clock)

### **3.0 Detail and brief summary of decision**

#### **3.1. Historical Dog Access**

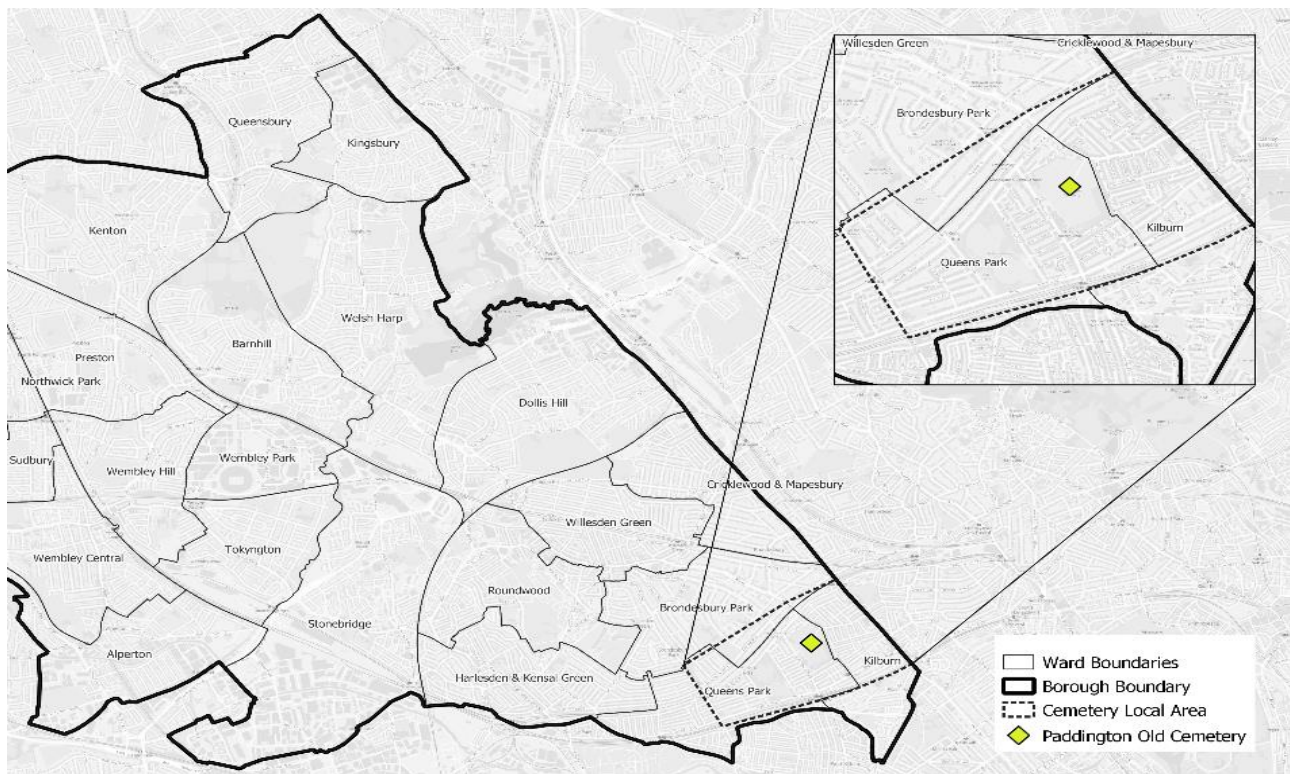
- 3.1.1. Brent Council has to date been flexible with POC users who walk dogs, particularly dating back to 2020 when Covid took place. They have been permitted to enter the cemetery from 8am, before the cemetery opens to members of the public at 9am they have been permitted to walk dogs off-lead. Whilst this permission for early access will continue the requirement to have a dog on lead will apply at all times.

#### **3.2. Staff Safety**

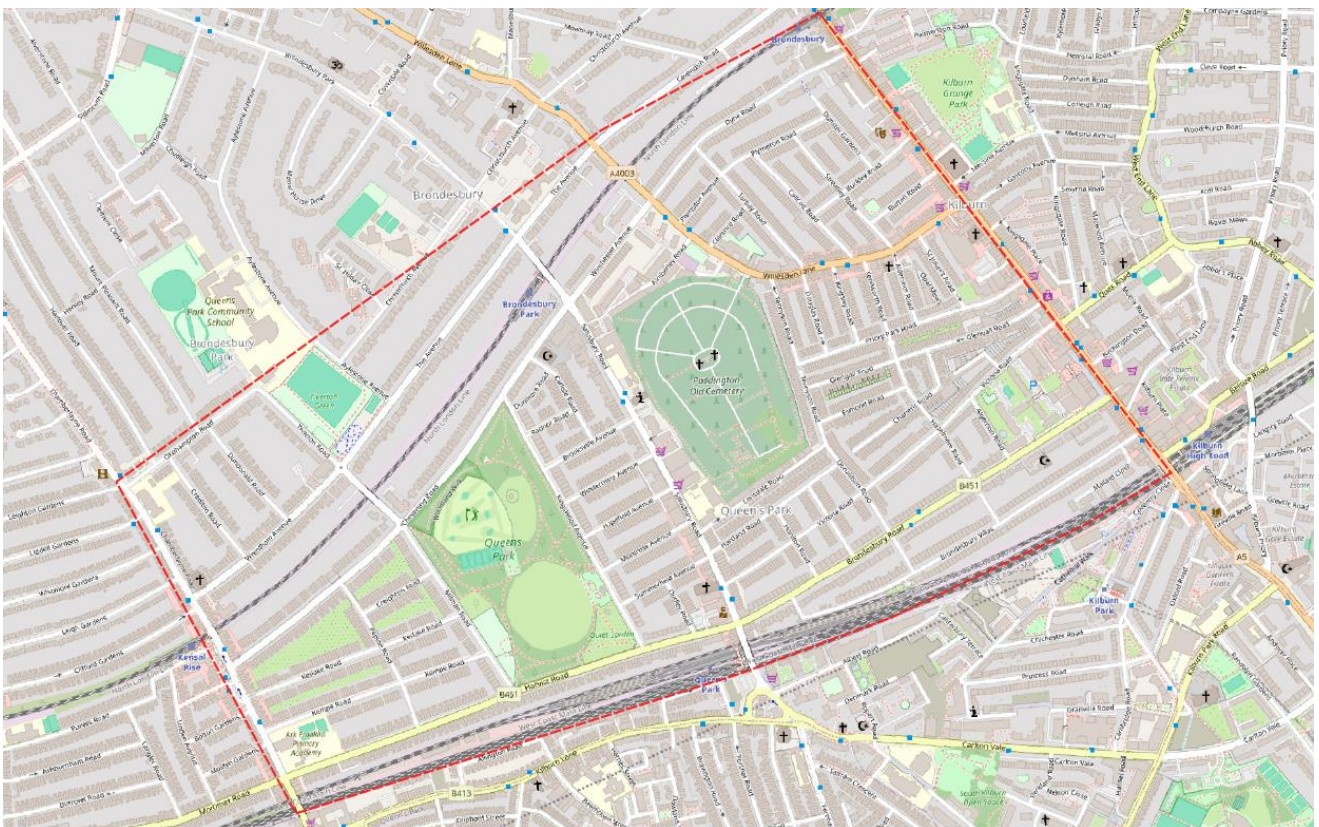
- 3.2.1. The safety of Brent Council staff, and their ability to perform their functions, is paramount and a key consideration in this review. Staff are present in the cemetery daily and as a consequence of the duties they undertake, are exposed to all users of the cemetery including dogs. Consideration has been given to instances where, for example, staff have to turn off heavy duty machinery as a result of a dog being too close, or running around, or dogs that approach staff whilst they are working.
- 3.2.2. Consideration has also been given to the verbal abuse that staff have been subjected to when they have attempted to speak with dog owners/walkers about the behaviour of their dog.

#### **3.3. Locality**

- 3.3.1. The chosen 'locality' for the consultation was initially discussed at para 2.3-2.4 of the Consultation Analysis Report and shown on a map on page 3. For ease of reference, it has been copied below and shows an area considerably larger than would be expected, as a walking 'locality'/distance to POC. The area was chosen to ensure that the consultation exercise included as many people as possible that may walk to the cemetery and therefore is considered both reasonable and appropriate.



Locality map



Close up of locality map



### **3.4. Animal Welfare**

- 3.4.1. As part of the Dogs Trust and Kennel Club's submissions to the consultation, they provided Brent Council with helpful information on the guidelines surrounding dogs, specifically around exercise. It was noted that the Kennel Clubs response on 5 December 2024 contains two points of error/anomaly: -
- 3.4.2. Page one of the submission states, 'We also note that Paddington Old Cemetery is one of four Brent cemeteries and the only one that allows dogs.' This is incorrect. The other three Brent cemeteries do in fact permit dogs, but the requirement is that they be on-lead.
- 3.4.3. Page two of the submission states, 'We can support reasonable 'dogs on lead' Orders which can, when used in a proportionate and evidence-based way for areas such as picnic areas or on pavements in proximity to cars.' The Kennel Club's response leaves out 'cemeteries' as being an appropriate requirement for 'dogs on lead' Orders. This is contrary to their public policy position stated on their website in relation to 'Advice for Local Authorities' and in a similar submission to a consultation for the London Borough of Hackney re dogs (page 145 of the final report).
- 3.4.4. The Council wrote to the Kennel Club for clarification on the above two points and their response was as follows:
- 3.4.5. The submission should read "We also note that Paddington Old Cemetery is one of four Brent cemeteries and the only one that allows dogs off lead. – This was a typo our end, happy for this to be amended."
- 3.4.6. "The omission of 'cemeteries' from the wording on page two of the submission is due to the fact that such decisions are made on a case-by-case basis. While cemeteries are included under the 'Dogs on Lead' section of our website as a general guideline, we recognise that different locations and circumstances may require specific considerations. The approach is always tailored to the individual needs of each area, taking into account factors such as the nature of the site, alternative suitable local off-lead areas and relevant evidence put to us from residents."

### **3.5. Evidence**

#### **3.5.1. Evidence – Complaints**

- 3.5.1.1. The number of complaints in POC has increased substantially from three in 2019, to seventy-four in 2024.
- 3.5.1.2. Although the cemetery location is scenic/visually stimulating as a dog walking setting, Brent Council must in the first instance consider its function as a cemetery and the rising complaints it has received regarding dog behaviour.
- 3.5.1.3. It is noted that no complaints have been received regarding dog behaviour at Brent's other three cemeteries.
- 3.5.1.4. Regard has also been given to the fact that due to a rise in complaints during the summer period (2024) officers reviewed risk assessments to determine what measures could be taken. Their assessments concluded that requiring dogs to be on a lead was the only practical way to ensure they remained under control. As part of their considerations, they expressed that while some may argue that a dog can be "under control" even when off-lead, this does not align with the understanding that true

control means being able to immediately manage a dog's behaviour in all situations. Therefore, keeping dogs on a lead was identified as the most effective approach.

### **3.5.2. Evidence – Consultation Analysis – Presenting Issues**

3.5.2.1. The main issues that have come to light during the consultation process include: -

- a. Dogs off lead
- b. Dog fouling
- c. Dogs running over graves
- d. Dogs out of control
- e. Dogs jumping up on/running up to visitors
- f. Dogs fighting and aggressive/intimidating dogs including incidents/dog attacks
- g. Dogs barking
- h. Dog owners shouting
- i. Owners not paying attention to their dogs
- j. Ornaments missing / being knocked over
- k. Ball games
- l. Professional dog walkers
- m. Dogs digging
- n. Burials
- o. Vehicles / Dogs running into their pathway

3.5.2.2. All of the above can be said to have a detrimental effect on the quality of life of those in the locality. There is also evidence which suggest that the presence of dogs has a positive impact, these include comments such as:

- being safe as a result of the number of dog walkers present on a daily basis
- an opportunity for social interaction
- provides a community space/hub
- provides positive experiences
- look out for each other
- prevents isolation
- creates a vibrant community
- important part of the local community
- builds friendships
- mutual support among residents
- bonding
- brings kindness
- brings happiness
- inclusive space
- common bond with pets
- cuddles for non-dog owners
- important to those living alone
- dogs uplift the space
- dogs enhance experience
- lifts people's moods
- feel rejuvenated
- allows walking freely
- positive atmosphere
- creates a unique environment
- asset to the area
- makes the cemetery well-used and cared for

- able to enjoy the quiet
- good for mental health.

### 3.5.3. Evidence – Consultation Analysis – Outcomes

3.5.3.1. The Consultation process provided evidence on a number of themes which have assisted in the decision making. Below is a non- exhaustive summary of some items that have been considered.

Item	Feedback
Fox Defecation	Respondents in favour of dogs reported the defecation found in the cemetery is related to foxes and other wildlife. There is no evidence to suggest this is the case.
Dogs should be allowed in cemetery	72% of respondents agreed dogs should be permitted into POC
Dogs should be allowed off lead	61% of respondents agreed dogs should be permitted off-lead, whilst 39% did not.
Suggested length of the lead for a dog	31% of Respondents think the suggested length of the lead for a dog should be unlimited <b>(280)</b> while 22% think it should be up to 2 metres in length <b>(201)</b> .
Respondents for and against dogs agreed with vehicle issues	In the free writing text in question 26, both those for and against dogs agreed that entry into the cemetery via vehicle is an issue, albeit different reasons were given.
Respondents for and against dogs agreed with professional dog walkers being an issue	In the free writing text in question 26, both those for and against dogs agreed that professional dog walkers are an issue.
Respondents for and against dogs agreed with ball games being an issue	In the free writing text in question 26, both those for and against dogs agreed that ball games are an issue.
Respondents for and against dogs agreed there should be respect during burials	In the free writing text in question 26, both those for and against dogs agreed that there should be respect given to those attending a burial.
Most Respondents say dog walkers are respectful of the cemetery and its users	In the free writing text in question 26, both those for and against dogs agreed that dog walkers are in the most part respectful of the cemetery.
Respondents regret buying plots or no longer visit the cemetery	In the free writing text in question 26, a reasonable number of those in favour of dogs on lead or a complete ban, stated they regretted buying plots in the cemetery to bury loved ones or have stopped going to the cemetery altogether.
Number of dog walker's vs complainants/ Being punished for a few individuals	In the free writing text in question 26, those in favour of dogs stated the number of dog walker's vs the number of persons making complaints is far greater, with compliant dog walkers being punished for the behaviour of a few individuals.
Dog walkers will stop visiting if on lead is imposed	In the free writing text in question 26, those in favour of dogs stated they will stop visiting POC if an on-lead rule is imposed.

## 4.0 Options

4.1. A decision has now been made using the options presented from page 21 of the Review Report to shape the final variation. The considerations are detailed below.

## **4.2. Dog Access**

4.2.1. It is noted that dog walkers in the most part are respectful of graves owners. However, due to the number of dog related complaints and the fact that the number of dogs in the cemetery has increased exponentially, Brent Council recognise that measures must be implemented in order to balance the needs of, and the detrimental impact on, users of POC, including videos of, and complaints by, officers being unable/delayed to undertake their duties and in some cases individuals refusing to purchase plots or visit loved ones at POC. Further, with the cemetery continuing as a working cemetery and plans to reclaim graves over the coming years, the space cannot continue to withstand so many dogs behaving in an uncontrolled manor or urinating on graves as they move around. In relation to dog access, the following option was chosen.

Option 3 - Permit access by dogs to POC on a lead with access to the entire cemetery.

4.2.2. One of the proposed options included limiting dogs to pathways. It was noted that with the pathways are quite narrow, this would mean forcing dogs to cross each other's path and may create unwanted behaviour.

4.2.3. Consideration was given to implementing a prohibition that addressed complaints regarding urinating on graves and headstones, due to the presence of a larger number of dogs at POC. However, it was noted that no such restriction was required in Brent's other cemeteries (where admittedly dog presence is significantly lower) and where no complaints had been recorded. It was therefore considered whether this nuisance of dogs urinating on graves and headstones would be resolved as a natural consequence of dogs being on-lead, and dog walkers consequently ensuring their dogs do not urinate on graves/headstones. Accordingly, rather than impose a prohibition at this time, this issue will be monitored with a view to reconsideration, if necessary, when the PSPO is due for renewal.

## **4.3. Access Timings**

4.3.1. Specific timings for access to dogs were considered, but after consideration was decided that this would be too restrictive and may force even more dogs into the cemetery during those specific times. In relation to access timings, the following option was chosen.

Option 8 - Permit access by dogs to POC on lead.

## **4.4. Burials**

4.4.1. Consideration was given as to whether dogs should be prevented from accessing the cemetery during burials. This was considered to be too restrictive at this time and by virtue of dogs being on leads, the behaviour complained of should cease. This will however be monitored until the next PSPO review later in 2025 where further measures may be considered such as preventing dog access, should dog behaviour be seen to be interfering with those attending burials.

Option 20 - Permit access by dogs to burials on lead.

## **4.5. Signage Provided at Burials**

- 4.5.1. Although not a prohibition, options were considered in relation to potential signage to be provided in relation to burials. As the access restriction has been defined as dogs on-lead during burials, it was decided to maintain the status quo, where signage is erected on the morning of a burial.

## **4.6. Dog Control**

- 4.6.1. Prohibition 21 relates to the control of dogs, and whilst they may now be required to be on a lead, walkers are still required to keep them under control.

## **4.7. Dog Fouling**

- 4.7.1. The current prohibition includes a requirement for dog walkers to pick up and dispose of dog fouling. This prohibition remains unchanged. There was consideration to amend this to include urination given the number of complaints, but decided monitoring, as set out above would be more appropriate. This prohibition includes exemptions for those with disabilities and/or assistance dogs.

## **4.8. Lead Length**

- 4.8.1. Lead lengths were considered together with the potential for individuals to use an unlimited length of lead to walk their dog with no control over what they do. Regard was had to a lead length that would mean the dog is close enough that a dog walker will be able to see, monitor and act on any behaviour but far away enough to provide the dog with some autonomy over which direction they walk in, which will still allow for access to the stimulating environment that POC provides. Feedback on lead length is that it should be up to 2 metres in length. However, it is considered that implementing a lead length that would only apply to POC at this time, would place POC out of synch with the other cemeteries. Furthermore, a maximum lead length has not been necessary in the other cemeteries to date. At the present time an incremental approach is thought to be appropriate whereby dogs being on-lead will be required in the first instance and with the effectiveness of this is being monitored. The need for a maximum lead length at POC and/or the other cemeteries will be reviewed when the current PSPO is due for renewal.

## **4.9. Vehicle Access**

- 4.9.1. Although Respondents for and against dogs provided examples of issues relating to vehicles, there was insufficient evidence at this stage that the vehicles were directly linked to dogs causing a nuisance as opposed to safety concerns. Vehicle access will be monitored over the coming months to identify an appropriate solution.

No option chosen

## **4.10. Restriction on Dog Numbers**

- 4.10.1. Consideration was given to the number of dogs that any one person can handle at a time and the Kennel Clubs recommendation to introduce a licence for dog companies to operate in the Borough of Brent. This is a recommendation officers will consider further. The current number of dogs is 4 and will remain the same and with dogs now being required to be on-lead, is likely to reduce the issues relating to the number of dogs considered out of control.

Option 41 - Maintain the number of dogs permitted per person to 4



## **4.11. Ball/Frisbee Games**

4.11.1. Across all Brent Cemeteries, The Local Authorities Cemetery Order 1977, Art 18(1)(e) incorporated in the Brent Cemetery 2008 Regulations provides that no “persons shall play at any game or sport in the Cemetery”. Officers are of the view this includes dog walkers playing ball /frisbee games with their dogs. Consideration to restricting the playing of ball, frisbee or any other type of games with dogs using an item such as a stick, by way of a PSPO prohibition has been considered. These types of games are having a detrimental impact on POC users which is also being used as a place of mourning. It was noted some responses commented on ornaments on graves being knocked over by these types of games, which had affected grave visitors. It was considered to implement option 49 - Ban ball/frisbee and any other games with or without dogs in any area. However, given the decision to implement the dogs on lead requirement, this restriction should by default resolve the problem of games with dogs currently causing an issue. Accordingly, this issue will be monitored with a view to reconsidering the position and or any complaints when the PSPO is due for renewal.

## **4.12. Bins**

4.12.1. A number of respondents suggested there are not enough bins in the cemetery. There are 22 bins including normal waste bins as opposed to ‘dog waste bins’. As DEFRA have agreed that dog waste can be placed in a normal waste bin. There was no evidence to suggest the bins are overfilled and not emptied regularly and accordingly no further bins will be added at this time.

Option 50 – Maintain number of bins which is currently 22.

## **5.0 Displacement**

5.1. POC has one entry point which is located in Willesden Lane, NW6.

5.2. On page 67 of the Consultation Analysis, question 9, sought to identify the reasons why individuals attended POC by asking “Do you visit Paddington Old cemetery to (please tick all that apply)”. Whilst more responses were received for this question, 242 responses were for respondents who fell within the locality area, as highlighted on the map below, and attended POC for the only purpose of ‘walking a dog’. These 242 are reflected as red & blue points/dots on the map below.

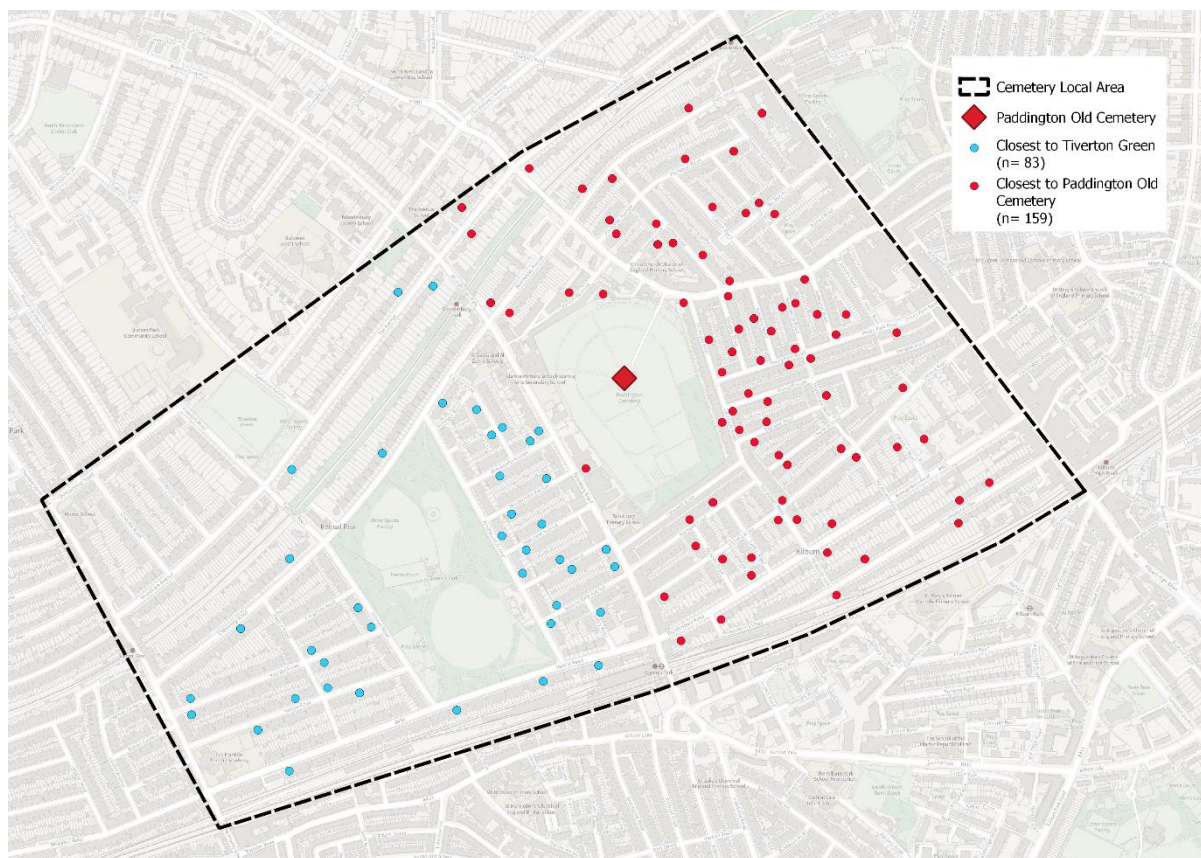
5.3. This data can be further broken down to indicate the number of dogs that are likely to be affected or displaced by the decision to require dogs to be on-lead. The map below indicates that 83 (blue points) respondents are physically closer to Tiverton. It is noted, when looking at the map below, there are fewer points/dots than respondents who reported to be dog owners, who visit the cemetery to walk a dog. This is because: -

- The points mark the postcode of the respondent, and so there are cases where multiple people residing at the same address have responded individually to the consultation
- There will be some respondents who live in different addresses but share a postcode, such as those living in the same streets, or in flats within the same building.

5.4. In addition, the map indicates 159 (red points) respondents that would usually walk their dogs off-lead in POC, that may now be displaced. Tiverton Green is considered an alternative site together with Paddington Recreation Ground, which is to the south of the borough, as able to support an increase in the number of dog walkers off leads. The number may be somewhat lower than 159, as this doesn’t take into consideration: -

- More than one respondent in the same household answering the consultation in relation to the same dog.

5.5. Alternatively, the number 159 may also be presented lower, because there may be more than one dog in a household that requires walking, but as they would be walking with the same person (presuming there are no more than four dogs), this theory can be discounted.



## 5.6. Prohibitions

5.6.1. Following consideration of the options above, and taking into account all of the above and the following reasons:

- the majority of dog owners are responsible and FPOC, amongst others, have sought in the past to encourage responsible dog ownership, and accept a real need to balance the needs of those responsible dog walkers, with those of other visitors and users of POC.
- responsible dog walkers ensure their dogs do not have any negative impacts on our communities.
- imposing restrictions related to dogs is an emotive issue and has had significantly divergent views which has been reinforced by the substantial and opposing petitions received during this consultation.
- ensuring that activities and behaviours in POC are respectful of it being the final resting place for thousands of people and a place of reflection for their families and friends as well as a place of historical and cultural significance.
- accepting it is the only Brent cemetery without a requirement for dogs to be on leads, and consequentially the only one where complaints re dog behaviour has been received and having a detrimental impact on POC users.
- the increase in complaints arise from genuine community concerns around anti-social behaviour (ASB) associated with a minority of irresponsible dog owners,

which have included regular complaints around dog fouling and urination, fear, intimidation and personal injuries when dogs have not been controlled.

- maintaining the status quo by doing nothing, does not address the anti-social behaviour concerns raised about dog behaviour by users of POC and staff.
- the dog control prohibitions enables Council officers' to deal with all aspects of anti-social behaviour by dog owners/walkers which are an important and effective tool in promoting responsible dog ownership within POC.
- acknowledging it is the position if/when regular dog walkers see uniformed officers, and to an extent council staff entering the cemetery, - they are more aware of their presence and more likely to comply with the requirement to clear up after their dogs, and once a dog is on a lead the dog walker will have more awareness as to the dogs activities that has been the cause of anti-social complaints.
- staff working in the cemetery are affected by dog behaviour in the cemetery and internal risk assessments have concluded further measures are required to control dog behaviour
- The proposed measures will address the complaints regarding dog behaviour and ensure POC dog walkers seriously think twice about their actions in the cemetery or risk the real possibility being issued with a fixed penalty notice.

5.6.2. The following variation of prohibition 23, set out below, will be implemented on, and become effective from, Monday 10 March 2025 in POC. The existing and proposed varied PSPO orders can be found in **Appendix 1&2** respectively.

### **5.6.3. Varied Prohibition**

5.6.3.1. The existing prohibition which relates to walled gardens, graveyards and cemeteries will now also apply to POC, this together with consideration of an enclosed area in the future, has resulted in Prohibition 23 being amended in red as follows:

#### **23. Letting a dog off a lead in a specified area**

Dogs must be kept on a lead in areas such as walled gardens, graveyards, cemeteries and areas where a notice specifies that dogs must be on a lead. The dog must be on a lead prior to entering the area. Where there are specific locations within an on-lead area where dogs can be walked off-lead, these will be notified in a notice displayed in that location

### **5.7. Proposal – Enclosed Area**

- 5.7.1. Consideration is being given to confirm whether a section of the cemetery could be enclosed to enable dogs off-lead. This consideration arises directly from having regard to the consultation responses and taking into account that the green area, is covering common graves and is not presently consecrated land, nor does it have any headstones, or private graves. This proposal is dependent on a consultation with relevant stakeholders (including the houses that border the space) and if successful, could provide another local space for dogs to be exercised off-lead. The proposed amended wording of prohibition 23 allows for an enclosed area to be created and identified by way of signage once this has been considered more fully.
- 5.7.2. The effectiveness of the amendments will be kept under review and that this will feed into the renewal/review process for when the current order is due to expire in January 2026. Details of this consultation will be published on the council's website in due course.

## 6.0 Alternative Options Considered

- 6.1. Several alternative enforcement options to the Public Spaces Protection Order (PSPO), have been explored, which include Acceptable Behaviour Contracts (ABCs), Community Protection Notices (CPNs), Injunctions and Criminal Behaviour Orders (CBOs).
- 6.2. The options assessment at **Appendix 3** sets out the various options that are available and advantages and disadvantage of using them.
- 6.3. A “space based” solution is preferable due to the challenges in identifying who is responsible for the behaviour which has been complained about in the past. It can be difficult to identify which dog has been responsible and also which person is responsible for any particular dog. For this reason, restrictions which attach to everyone using the space are preferable and will provide a clear set of rules to be followed. The intention is that no dogs will be able to roam off a lead in this location.
- 6.4. In addition to a space based solution being more appropriate here, the Council is required to take account of the cost of respective enforcement actions. Options such as an injunction in respect of a named person can be costly and time consuming.

## 7.0 Additional background

None

## 8.0 Financial Implications

- 8.1. The approximate cost of affixing or modifying additional notices to the entrance of POC is £1,000 and will be funded from existing budgets within Partnerships Housing and Resident Services.
- 8.2. As part of existing duties undertaken by the Neighbourhood Patrol team and MET Police, enforcement will be undertaken and funded from existing budgets within the Public Realm Service. The cost of enforcement is £30p/h.

## 9.0 Legal Implications

- 9.1. The Anti-Social Behaviour, Crime, Crime and Policing Act 2014 (“the 2014 Act”) provides the Council with power to make PSPOs in the areas where a particular nuisance or problem exists which is detrimental to local communities’ quality of life, by imposing conditions on the use of those areas. PSPOs can also be used to deal with likely future problems (section 59).
- 9.2. In order to issue a PSPO, the Council must be satisfied on reasonable grounds that the two statutory conditions are met. The first condition (section 59(2) of the 2014 Act) is that-
  - 9.2.1. the activities carried on in a public place within the authority’s area have had a detrimental effect on the quality of life of those in the locality, or
  - 9.2.2. it is likely that the activities will be carried on in a public place within that area and that they will have such an effect, and the second condition (section 59(3) of the 2014 Act) is that the effect, or likely effect, of the activities-
    - a) is, or is likely to be, of a persistent or continuing nature,
    - b) is, or is likely to be, such as to make the activities unreasonable, and
    - c) justifies the restrictions imposed by the notice.

- 9.3 A PSPO must identify the public place in question and can (a) prohibit specified things being done in the restricted area, (b) specified things to be done by persons carrying on specified activities in that area, or (c) does both of those things.
- 9.4 The reasonableness requirement is set out in section 59(5) of the 2014 Act which provides that the only prohibitions, or requirements that may be imposed are ones that are reasonable to impose in order-
- a) prevent the detrimental effect referred to from continuing, occurring or reoccurring, or
  - b) to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.
- 9.5 Section 59(6) provides that a prohibition or requirement may be framed-
- a) so as to apply to all persons, or only persons in specified categories, or to all persons except those in specified categories;
  - b) so as to apply at all times, or only at specified times, or at all times except those specified;
  - c) so as to apply in all circumstances, or only in specified circumstances, or in all circumstances except those specified.
- 9.6 Further, the Council may vary an existing PSPO (a) by increasing or reducing the restricted area; and /or (b) by altering or removing a prohibition or requirement included in the order, or adding a new one, providing it complies with the reasonableness requirement.
- 9.7 The Home Office Anti-Social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers statutory guidance for frontline professionals (The Home Office Guidance) states "these orders can restrict what people can do and how they behave in public spaces, it is important that the restrictions imposed are focussed on specific behaviours and are proportionate to the detrimental effect that the behaviour is causing or can cause, and are necessary to prevent it from continuing, occurring or recurring".
- 9.8 Further, with respect to the controlling the presence of dogs the Home Office Guidance states the following:
- a) "Under the Animal Welfare Act 2006, owners of dogs are required to provide for the welfare needs of their animals. This includes providing the necessary amount of exercise each day, which in many cases will require dogs to be let off the lead whilst still under control".
  - b) "When deciding whether to make requirements or restrictions on dogs and their owners, local councils will need to consider whether there are suitable alternative public areas where dogs can be exercised without restrictions. Councils should consider if the proposed restrictions will displace dog walkers onto other sensitive land, such as farmland or nature conversation areas".
  - c) "Guidance published by the Department for Environment, Food and Rural Affairs on dog control states that councils must consult dog law and welfare experts e.g. vets or animal welfare officers and organisations affected by restrictions before seeking to impose restrictions".
  - d) "Consideration must also be given on how any dog walking restrictions being proposed would affect those who rely on assistance dogs, ensuring any prohibition or requirement is compliant with the provisions of Equality Act 2010 or considering what exemptions should apply for assistance dogs".

- 9.9 Appendix 2 of the April 2015 Cabinet report, in relation to the implementation of the 2014 Act, sets out a local protocol within Brent for making a PSPO. The local protocol includes a local threshold criteria in addition to the requirements for making a PSPO to those set out in section 59 of the 2014 Act and the additional local threshold criteria are as follows:
- a) “(a) the nuisance behaviour described has taken place on at least five occasions over a one-year period, or
  - c) evidence has been gathered over a three-month period”.
- 9.10 Before deciding to vary the PSPOs, the Council must comply with certain statutory requirements relating to publication, consultation, notification and information regarding the proposed PSPOs variation. In addition, the Council will need to evidence that it has given regard to statutory guidance issued by the Secretary of State.
- 9.11 The following consideration points are brought to the attention of the Corporate Director, Partnerships, Housing and Resident Services:
- a) the term “detrimental effect” is not defined by statute. The term has been considered by case law and the current position is “local authorities [have been] given a wide discretion to decide what behaviours are troublesome and require to be addressed within their local area. This requires local knowledge, taking into account conditions on the ground, exercising judgement (1) about what activities need to be covered by a PSPO and (ii) what prohibitions or restrictions are appropriate for inclusion in the order. There may be strong feelings locally about whether any particular activity does or does not have a detrimental effect, in such cases a local authority will need to weigh up competing interests ... .....the behaviours which PSPOs are intended to target are those which are seriously anti-social, not ones that are simply annoying”.
  - b) the Corporate Director, Partnerships, Housing and Resident Services is reminded to “look at each proposal under the PSPO and not focus on just the matters raised in writing”.
  - c) The Local Government Association paper entitled “Public Spaces Protection Order, Guidance for Councils” (pg. 15), although non statutory guidance, states “Councillors have an important role in examining the processes used in drafting the proposal. This will include analysing the outcomes of the consultation process and other supporting evidence offered to satisfy the statutory criteria, and determining whether, on balance this provides sufficient grounds to proceed”. The Local Government Association (“LGA”) does not provide statutory guidance, and local authorities are not legally obliged to follow advice from the LGA. However, the LGA provides useful advice to local authorities on areas of best practice in relation to the exercise of various local authority functions.
  - d) When considering the Human Rights Act the council must balance the rights and freedoms of individuals, in relation to the proposed restrictions imposed, against the needs of the wider community. In particular, s72 of the Anti-Social Behaviour, Crime and Policing Act 2014 requires the Council to have “particular” regard to Articles 10 (the right to freedom of expression) and 11 (the right to freedom of assembly and association). As a public authority within the meaning of section 6 of the Human Rights Act 1998 it is unlawful for the Council to act in a way which is incompatible with the European Convention for the Protection of Human Rights Convention right. Each of these rights are “qualified rights” which means that they can be interfered with if the interference is justified. The potential justifications here include public safety, the prevention of crime and disorder and the protection of health.
  - e) PSPOs, or their variation, may be challenged within six weeks of being made by way of an application to the High Court. The Court may suspend the operation of the PSPO



or any of the prohibitions imposed by it until the determination of the proceedings. Should the Court be satisfied the Council erred and the applicant has been substantially prejudiced by that failure, it may quash the Order or any of the prohibitions imposed by it.

- f) Breach of a PSPO is a criminal offence, subject to a fixed penalty notice (of up to £100) or prosecution and a fine of up to £1,000 (Level 3 of the Standard Scale). Once approved, the PSPO variation must be published on the Council website. Notices must be put up where practical, on or adjacent to the public places to which the PSPO variation relates, publicising the fact that the PSPO has been made and its effect.
- g) The decision notice for the Cabinet meeting of 22 December 2022 regarding the delegation of functions in the exercise of powers under the 2014 Act, which covers PSPOs, confirms: "Delegated authority to the Corporate Director Resident Services in consultation with the Cabinet Member for Safer Communities & Public Protection for the function of making all Public Spaces Protection Order under the Anti-Social Behaviour Crime and Policing Act 2014 Act".
- h) The post Corporate Director Resident Services and Cabinet Member for Safer Communities & Public Protection has since been deleted and the relevant functions transferred to the Corporate Director Partnerships, Housing and Resident Services and Cabinet Member for Public Safety & Partnerships. Consequently, the delegation is also "inherited" by the said Corporate Director and Cabinet Lead Member.
- i) Should changes to the PSPO be granted, training for all authorised council and police officers will be provided. This is not only to ensure that all officers understand what prohibitions can be enforced but also to ensure that the council's expectations around proportionality are applied when making a decision as to whether a Fixed Penalty Notice (FPN) should be issued. This is to ensure a fair and consistent approach across the borough.

## 10.0 Equality Implications

10.1. The Council must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment and victimisation
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it, pursuant to s149 Equality Act 2010. This is known as the Public Sector Equality Duty.

10.2. The Public Sector Equality Duty covers the following nine protected characteristics: age, disability, marriage and civil partnership, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

10.3. The purpose of the duty is to enquire into whether a proposed decision disproportionately affects people with a protected characteristic. In other words, the indirect discriminatory effects of a proposed decision. Due regard is the regard that is appropriate in all the circumstances.

10.4. The Equalities Impact Assessment is attached as **Appendix 4**.

10.5. The Equalities Impact Assessment (EIA) sets out the equality and Human Rights considerations in further detail. It is considered that the change to require dogs to be on-lead is unlikely to be discriminatory for people with any protected characteristics; age, disability, gender reassignment, pregnancy and maternity, race, religion or belief,

sex and sexual orientation, marriage, or civil partnership, as it is applied to all equally. In addition, the proposed variation restricts how people can use POC, not their ability to use or gather there.

- 10.6. In light of the EIA consideration the PSPO variation does not interfere with articles 10 (freedom of expression) and Article 11 (rights to assemble and associate with others). Furthermore, even if the said Articles were interfered with, the interference would be justified as being prescribed by law and in pursuance of a legitimate aim namely, in the interests of public safety, the prevention of crime and disorder and the protection of public health.

## **11.0 Consultation with Ward Members and Stakeholders**

- 11.1. Consultation took place with the lead Cabinet Member for Safer Communities, Jobs & Skills on 30 January 2025 and with ward members up to and including on 6 March 2025.

## **12.0 Human Resources/Property Implications (if appropriate)**

- 12.1. None

**Any conflict of interest declarations by members consulted:** None notified

**Any dispensations to be granted by the Chief Executive:** Not applicable

**I approve the above recommendations.**

Signature.....Peter Gadsdon.....Date.....07.03.2025.....

Position: Corporate Director for Partnerships, Housing & Resident Services

Name: Peter Gadsdon