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REPORT TO:	ENVIRONMENTAL AND DEVELOPMENT SERVICES COMMITTEE	AGENDA ITEM: 21
DATE OF MEETING:	15 <sup>th</sup> AUGUST 2019	CATEGORY: RECOMMENDED
REPORT FROM:	STRATEGIC DIRECTOR (SERVICE DELIVERY)	OPEN
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SUBJECT:	PUBLIC SPACES PROTECTION ORDERS	REF:
WARD(S) AFFECTED:	ALL	TERMS OF REFERENCE: EDS14

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## 1. Recommendations

- 1.1 That the Committee approves the proposed three year extension of six Public Spaces Protection Orders for South Derbyshire which were originally approved in 2017 and 2018.
- 1.2 That the Committee approves that officers commence a consultation process on the possible inclusion of various other matters within additional Public Spaces Protection Notices.

## 2. Purpose of Report

- 2.1 To advise Committee of the current matters contained within South Derbyshire Public Spaces Protection Orders, of the effect of the existing Orders and of the legal tests which must be met to enable Orders to be extended.
- 2.2 To seek approval to extend six existing Public Spaces Protection Orders for the maximum permissible three year period.
- 2.3 To seek approval to undertake public consultations on possible additional matters to be included within future Public Spaces Protection Notices.

## 3. Background

- 3.1 The Anti-Social Behaviour Crime and Policing Act 2014 ("the Act") introduced various discretionary powers for the police and local authorities to take new actions to tackle anti-social behaviour.
- 3.2 Sections 59 to 75 of the Act offer Councils powers using Public Spaces Protection Orders (PSPOs) to stop individuals or groups from committing anti-social behaviour (ASB) in a public place.

- 3.3 Before making a PSPO the Council must be satisfied that the behaviour being restricted;
- Is having, or be likely to have, a detrimental effect on the quality of life of those in the locality, and;
  - Is persistent or continuing in nature;
  - Is unreasonable, and
  - The impact of the behaviour justifies the restrictions being proposed.
- 3.4 The PSPO can control the unreasonable behaviour by imposing conditions on the use of a specified area. Statutory guidance issued by the Home Office advises that a PSPO is “*designed to make public spaces more welcoming to the majority of law abiding people and communities and not simply restrict access*”.
- 3.5 Once declared a PSPO can last up to a maximum three years. After this it must either be extended or it is automatically revoked. The controls contained in a PSPO can be varied or removed at any time.
- 3.6 Where the conditions of a PSPO are breached there are two possible sanctions. Firstly, a Fixed Penalty Notice (FPN) can be issued which, if paid, discharges the liability for the offence. If the offence is not admitted or the FPN is not paid then the offence can be taken to a Magistrate’s Court to seek a prosecution. Where a PSPO is used for restricting alcohol consumption, a FPN will only be issued to an individual if they fail to comply with a request to cease drinking or surrender the alcohol.
- 3.7 FPNs can be issued by Police Officers, Police Community Support Officers (PCSOs), Council Officers or anyone else authorised by the Council. Prosecutions can only be taken by the Council. FPN’s issued in relation to alcohol consumption will be issued by either a PCSO or Police Officer.
- 3.8 The contents of a PSPO can be challenged in the High Court within six weeks of it being made. The challenge can be either on the basis that the Council did not have the power to make the relevant restriction, that the relevant tests stated in para 3.3 above are not met, or that the procedural requirements for creating a PSPO were not met.

### **3.9 PSPOs in South Derbyshire**

- 3.10 Levels of anti-social behaviour in South Derbyshire are relatively low. Nevertheless the Council has made proactive use of the power to deal with specific issues or locations of anti-social behaviour and to continue to apply pre-existing controls on how people use its parks and open spaces.
- 3.11 To date the Council has declared seven PSPOs, all of which are published on the Council’s website. These consist of;
1. A District-wide PSPO requiring dog owners to clean up after their dog;
  2. A requirement for dogs to be kept on leads in some parks;
  3. A ban on dogs in some children’s play areas;
  4. A PSPO making registered owners responsible for litter thrown from their vehicle;
  5. Eureka Park PSPO to control aspects of ASB in Eureka Park;
  6. A prohibition on access to land off Staker Lane, Findern to prevent fly tipping;

7. The Swadlincote Town Centre PSPO to control aspects of town centre ASB.

3.12 The PSPOs numbered 1 to 5 in paragraph 3.11 all expire in January 2020. The Staker Lane PSPO expires in August 2021. This report seeks Committee approval to extend all of these six PSPOs in their current form to 2023.

3.13 Non-statutory guidance issued by the LGA on the use of PSPOs states that “*Effective evaluation of Orders will be important when determining whether any extensions or variations would be appropriate*”.

3.14 Appendix 1 to this report contains an evidence review of the impacts of each of the PSPOs numbered 1 to 6 in paragraph 3.11 above. In the opinion of the Head of Environmental Services the community effect of all six of these PSPOs has been positive and there is objective evidence to justify the continuation of all six Orders.

3.15 The seventh PSPO relating to Swadlincote Town centre is the subject of a separate report from the Community Safety Manager.

### **3.16 Additional Matters for Possible Inclusion in a PSPO**

3.17 Since the declaration of the PSPOs, further matters have been brought to the attention of the Head of Environmental Services for possible control through the use of PSPOs. These matters are set out below.

3.18 Fly tipping remains one of the Council’s corporate priorities. The Council has already used a PSPO to successfully prevent fly tipping incidents at a former ‘hot spot’ for tipping and ASB - namely Staker Lane. This involved obtaining a PSPO to limit access to this small section of public highway and then gating it off whilst still permitting limited access to local land owners and public agency vehicles.

3.19 **Lowes Lane** near Swarkestone has been the subject of multiple incidents of fly tipping in recent years as well as other forms of ASB. It is a length of public highway which ends in an unsurfaced track which does not permit a through route for vehicles. Both the public highway and privately owned fields either side of the Lane have been targeted by fly tippers and it is one of the top five most frequent locations for fly tipping in South Derbyshire. Officers are of the opinion that the use of a PSPO to limit access along the Lane may offer an opportunity to ‘design out’ opportunities for offenders.

3.20 The possible use of a PSPO along Lowes Lane has already been the subject of initial discussions between the District Council and Derbyshire County Council. Given that the location is public highway, any proposals to restrict access will potentially conflict with the Road Traffic Act.

3.21 Officers therefore seek approval to undertake further formal consultations on the potential use of a PSPO for Lowes Lane. The outcomes of this consultation will be brought back to Committee at a later date.

3.22 A number of other local authorities have used PSPOs to **require dog owners to carry bags or other receptacles to collect their dog faeces when using parks and open spaces**. This matter was considered by this Committee in November 2016 at which time the Committee resolved to review the Council’s position once a reasonable amount of evidence about the benefits and dis-benefits had become clear.

- 3.23 In accordance with the November 2016 Committee resolution officers seek approval to undertake consultations on the potential use of a PSPO to require dog owners to carry bags or other receptacles to collect their dog faeces when using parks and open spaces. The outcomes of this consultation will be brought back to Committee at a later date.
- 3.24 Since the declaration of the PSPOs in 2017 a small number of additional children's play areas have been created, for example Foss Road, Hilton. It is proposed to consult on and revise the **children's play areas from which dogs are prohibited** contained in the existing PSPO. The outcomes of this consultation will be brought back to Committee at a later date.
- 3.25 As shown by the evidence in Appendix 1, on the whole the PSPOs have had a beneficial impact and based on anecdotal evidence from officers they have generally been welcomed by local communities. However, the most contentious PSPO is that which requires dog walkers to keep their **dog on a lead in Swadlincote Woodlands**. Of all of the PSPO requirements this is the one which is the most frequent cause of complaint to enforcement officers.
- 3.26 Officers therefore seek approval to undertake specific consultations with users and stakeholders of Swadlincote Woodlands to understand the demands for the continuation of the requirement to keep a dog on lead in this location.
- 3.27 For the purpose of clarity it is intended to continue to include Swadlincote Woodlands in the Dogs on Leads PSPO for the time being. However, the outcomes of this consultation will be brought back to Committee at a later date at which point Committee will take the decision about whether to continue to include Swadlincote Woodland within the Dogs on Lead Order, or to choose to exclude it.

#### **4. Financial Implications**

- 4.1 Effective enforcement of all of the existing PSPOs can be delivered within existing budgets.
- 4.2 The costs for the proposed consultations described in paragraph 3.16 onwards will be met from existing budgets.
- 4.3 The financial implications of the introduction of any changes to PSPOs will be covered in future reports which seek approval for such changes.

#### **5. Corporate Implications**

##### **Employment Implications**

- 5.1 None.

##### **Legal Implications**

- 5.2 Minor. The extended PSPOs will all will be subject to possible appeal in the High Court for up to 6 weeks after being made.

##### **Corporate Plan Implications**

- 5.3 The proposals align with the "Place" Corporate Plan Theme and the key aim to "help maintain low crime and anti-social behaviour levels".

## **Risk Impact**

- 5.4 The proposals will have a beneficial mitigating action against the corporate risk of “Managing the environmental impact of incidents across the District”.

## **6. Community Implications**

### **Consultation**

- 6.1 The Act sets out bodies with whom the Council must consult before introducing or varying a PSPO. These include the local chief officer of Police; the Police and Crime Commissioner; the County Council; owners and occupiers of land affected; local parish councils. Councils have discretion to consult more widely than this as they deem appropriate.
- 6.2 For the purposes of consulting on the extension of the existing PSPOs, officers intend to send the Evidence Review in Appendix 1 as the basis of the consultation to the parties named in paragraph 6.1. If these consultations result in any proposed changes to the existing PSPOs then a further report will be brought to this Committee.
- 6.3 More extensive consultations to be agreed with the Council’s Communications Team will be undertaken for the proposals described in paragraphs 3.16 to 3.27, namely
- 6.3.1 To determine the potential viability and scope of a PSPO to limit access on Lowes Lane, Swarkestone;
  - 6.3.2 To determine the need for the introduction of a PSPO requiring dog owners to carry bags or other receptacles to collect their dog faeces when using parks and open spaces;
  - 6.3.3 To determine the need to prohibit dogs from being allowed into children’s play areas not already covered by the PSPO, and;
  - 6.3.4 To determine the need to retain the requirement for dogs to be kept on the lead in Swadlincote Woodlands.
- 6.4 Full details of the consultation process and consultation results will be presented to Committee within the future relevant reports.

### **Equality and Diversity Impact**

- 6.5 Fair and proportionate application of the law should ensure that improvements in equality and diversity are indirectly delivered by tackling crime and anti-social behaviour.

### **Social Value Impact**

- 6.6 Beneficial.

### **Environmental Sustainability**

- 6.7 Beneficial. Proportionate regulation is an important feature of ensuring community cohesion. It also ensures positive economic growth by preventing businesses which operate outside the law from gaining a competitive advantage in their respective market.

## **7. Conclusion**

- 7.1 That Members approve the extension of the existing six PSPOs to which the report relates until 2023.
- 7.2 That Members approve officers to begin consulting on the matters described and to bring further report(s) to Committee to enable decisions to be made on each matter.

## **8. Background Papers**

- 8.1 Environment & Development Services Committee, 20<sup>th</sup> August 2015.
- 8.2 Environment & Development Services Committee, 17<sup>th</sup> November 2016