
REPORT TO:	ENVIRONMENTAL AND DEVELOPMENT SERVICE COMMITTEE	AGENDA ITEM: 13
DATE OF MEETING:	20th AUGUST 2015	CATEGORY: RECOMMENDED
REPORT FROM:	MIKE HAYNES – DIRECTOR OF HOUSING AND ENVIRONMENTAL SERVICES	OPEN
MEMBERS' CONTACT POINT:	MATT HOLFORD – ENVIRONMENTAL HEALTH MANAGER (EXT. 5856)	DOC:
SUBJECT:	PUBLIC SPACES PROTECTION ORDERS AND FIXED PENALTY NOTICE SANCTIONS UNDER THE ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014	REF:
WARD(S) AFFECTED:	All	TERMS OF REFERENCE: EDS14, HCS10

1. Recommendations

- 1.1 That Members approve the proposed consultation process for the production of District-wide Public Spaces Protection Order or Orders (PSPO).
- 1.2 That Members approve the proposed procedure for the development of future PSPOs where they are of limited geographical scope.
- 1.3 That Members approve the proposed Fixed Penalty Notice charges under the Anti-Social Behaviour Crime and Policing Act 2014.

2. Purpose of Report

- 2.1 To seek approval from Members on the process of consulting on, and seeking approval for, South Derbyshire Public Spaces Protection Order(s) both now and in the future.
- 2.2 To seek approval from Members on the level of penalty to be imposed in the event of the issue of Fixed Penalty Notices for breaches of PSPOs and other offences.

3. Background

- 3.1 The Anti-Social Behaviour Crime and Policing Act 2014 (“the Act”) introduced various new discretionary powers for the police and local authorities to take to tackle anti-social behaviour.

- 3.2 The Act revokes 19 forms of legal intervention contained in previous statutes and replaces them with 6 new forms of intervention.
- 3.3 **Civil Injunctions** and **Criminal Behaviour Orders** can be issued by the courts if applied for by the local authorities. **Dispersal Powers** are only available to the Police. **Closure Powers** and **Community Protection Notices** can be applied for by the Council to deal with specific problems in specific circumstances.
- 3.4 The final power – **Public Spaces Protection Notices** (PSPO), offer proactive powers to enable Councils to stop individuals or groups from committing anti-social behaviour in a public place. PSPOs replace various previous powers, namely;
- Dog Control Orders. These enabled specific control to be imposed on the control of dogs on specified areas of land open to the public.
 - Litter Clearing Notices. This enabled notices to be served on land-owners to require land defaced by litter to be cleaned up and kept clean.
 - Street Litter Control Notice. This enabled a notice to be served on premises considered to be contributing to the defacement of streets due to litter.
 - Graffiti / Defacement Removal Notice. This enabled a notice to be served requiring graffiti which is offensive or detrimental to local amenity to be removed.
 - Designated Public Place Order. This gave police officers discretionary powers to require a person to stop drinking and confiscate alcohol or containers of alcohol in public places
 - Gating Order. This enabled Councils to restrict public access to public rights of way to assist in the reduction of crime or anti-social behaviour.
- 3.5 Thankfully, levels of anti-social behaviour in South Derbyshire are low. Therefore, there has been little previous need to make use of the powers revoked by the Act. There are no existing Litter Clearing Notices, Street Litter Control Notices or Graffiti / Defacement Removal Notices in place, nor have there been for some years.
- 3.6 There are three current South Derbyshire Dog Control Orders. These were introduced in 2008 and revised following E&DS approval in 2013. The three Orders require dog mess to be removed 'forthwith'; require dogs to be kept on a lead in a number of the Districts parks and open spaces; and prohibit dogs entirely from other parks and open spaces.
- 3.7 There is also an existing Designated Public Place Order (DPPO) in place at Eureka Park. This order was introduced in 2010. This order gives police officers the power to confiscate alcohol on request.
- 3.8 The existing Dog Control Orders and the DPPO will remain in force until revised by a PSPO. If they are not revised they will automatically transfer into a PSPO three years after the Act took effect (October 2014).
- 3.9 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;

- Is persistent or continuing in nature;
- Is unreasonable, and
- The impact of the behaviour justifies the restrictions being proposed.

3.10 The PSPO can control the unreasonable behaviour by imposing conditions on the use of a specified area which will apply to everyone. 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*”.

3.11 Once declared a PSPO can last up to 3 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.

3.12 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 magistrates 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.

3.13 FPNs can be issued by Police 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 or use of a legal high substance will be issued by either a PCSO or Police Officer.

3.14 The contents of a PSPO can be challenged in the High Court within 6 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 3.9 above are not met or that the procedural requirements for creating a PSPO were not met.

3.15 The statutory guidance offers some indication of the potential contents of a PSPO. Specifically it mentions controlling dogs, the use of alcohol, noise or prohibiting access to certain areas of land.

4. Consultation Proposals

4.1 Whilst we are keen that there is full and proper public consultation on the contents of any possible PSPOs, the very open nature of the possible contents make it difficult to provide a clear scope on the consultation process. We therefore propose to follow the following process;

4.1.1 **Phase 1.** We will send a briefing paper to key stakeholders to explain the purpose of a PSPO, to explain the existing controls in place in South Derbyshire (namely those described in para 3.6-3.7) and to seek their views on any proposals they would like to bring forward. The key stakeholders are Derbyshire Constabulary, Derbyshire County Council, Parish Councils and all SDDC Councillors.

4.1.2 We will report to the South Derbyshire Health and Wellbeing Action Group and the Safer South Derbyshire Partnership.

- 4.1.3 We will use a simple evaluation matrix using the tests in para 3.8 to assess any proposals made by stakeholders. As an outcome from Phase 1 we will produce a set of draft PSPOs.
- 4.1.4 **Phase 2.** We will issue draft PSPOs for ‘informal’ public consultation. This will include writing directly to relevant interest groups in areas where the draft PSPOs are proposed to take effect. Relevant interest groups will include relevant ‘Friends of’ groups in the District, the Chamber of Commerce, relevant secondary schools, etc. We will send the proposed PSPOs to Area Forum attendees. We will produce an online consultation questionnaire and post temporary public notices at the entrances of all of the public spaces contained in the draft PSPO.
- 4.1.5 We will evaluate the feedback to each of the proposals in the draft PSPOs based on the relative popularity of the response. We will also use the simple evaluation matrix to evaluate any additional proposals made outside those contained in the draft PSPOs.
- 4.1.6 At the end of Phase 2 we will submit a further report to E&DS with a set of final draft Public Space Protection Orders seeking approval to go to the final formal consultation phase.
- 4.1.7 **Phase 3.** This will be the formal consultation phase necessary to demonstrate compliance with the requirements of the Act and the Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014.
- 4.1.8 Given the extensive consultations undertaken to this point we do not anticipate any significant changes to the final draft PSPOs during this phase. Nevertheless we propose to return to E&DS following the consultation to seek a final member decision if there are any changes to the draft PSPOs and to seek Committee endorsement of the PSPOs to be issued. This is not strictly necessary under the Act, but Committee endorsement is likely to reduce the chances of a successful appeal of a PSPO.

5. Delegated Powers for Future PSPOs

- 5.1 PSPOs can potentially be very wide in scope or used to deal with local or short-term problems. Local or short-term problems will usually require a relatively rapid response and therefore it would be inefficient to follow the same consultation process described above for all future proposed PSPOs.
- 5.2 If officers consider that there is a need to seek a PSPO for a local or short-term problem we would propose to carry out the statutory consultation exercise required by the Act, but also to consult with the Chair of both E&DS and H&CS prior to making an Order. If, in the opinion of either Committee Chair, the PSPO needs Committee endorsement then we would propose to submit a report to the respective Committee before making the Order.
- 5.3 Given that all PSPOs have a maximum duration of 3 years, we would propose to follow a similar process to that described in Section 4 of this report every 3 years in order to regularly review the existing PSPOs.

6. Fixed Penalty Notice

- 6.1 The Clean Neighbourhoods and Environment Act 2005 gave local authorities the option of issuing fixed penalty notices as a way of dealing quickly with low level nuisance behaviour.
- 6.2 E&DS on 16th July 2006 approved various charges for Fixed Penalty Notices issued by South Derbyshire officers. The Anti-Social Behaviour, Crime and Policing Act 2014 brings in new offences which can be also be dealt with by way of a Fixed Penalty Notice.
- 6.3 The Act contains maximum Fixed Penalty Fees which cannot be exceeded and gives the option of the local authority offering a lower fee for early (within 14 days) payment.
- 6.4 In order for officers to utilise the fixed penalty notice options, E&DS need to approve the maximum and discounted fee. Table 1 below shows the maximum fixed penalty charge permitted under the Act. The table also contains the proposed maximum and discounted fee proposed to be used locally.

6.5 Table 1

Nature of Offence	Legislative Power	Maximum Permitted Charge	Proposed Charge	Proposed Charge with discount for early payment
Failing to comply with a Community Protection Notice	s.52 Anti-Social Behaviour Crime and Policing Act 2014	£100	£100	£70
Failure to comply with a Public Spaces Protection Order	s.68 Anti-Social Behaviour Crime and Policing Act 2014	£100	£100	£70

7. Financial Implications

- 7.1 Minor. The costs of the implementation of new PSPOs cannot be estimated until the details of the final proposals are known. We are likely to use existing staff resources to enforce the Orders and therefore do not anticipate any additional staff revenue costs. There will be additional costs associated with signage, but there may be additional income associated with revenue from penalty notices.

8. Corporate Implications

- 8.1 The proposals align with the “safe and secure” Corporate Plan Theme.

9. Community Implications

- 9.1 None

10. Conclusion

10.1 The proposals set out a process for consulting on the contents of proposed Public Spaces Protection Orders which go well beyond the legal minimum as well as setting out a process for the creation of future PSPOs if there is an acute or local need. The proposals will also enable Council enforcement officers to utilise all of the available legal interventions contained in the Anti-Social Behaviour, Crime and Policing Act 2014.