
REPORT TO:	ENVIRONMENTAL AND DEVELOPMENT SERVICES COMMITTEE	AGENDA ITEM: 13
DATE OF MEETING:	17th NOVEMBER 2016	CATEGORY: RECOMMENDED
REPORT FROM:	MIKE HAYNES – DIRECTOR OF HOUSING AND ENVIRONMENTAL SERVICES	EXEMPT PARAGRAPH NO: Not Exempt
MEMBERS' CONTACT POINT:	MATT HOLFORD – ENVIRONMENTAL HEALTH MANAGER	DOC:
SUBJECT:	PUBLIC SPACES PROTECTION ORDERS 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 final consultation on a set of draft District-wide Public Spaces Protection Orders (PSPO).

2. Purpose of Report

- 2.1 To provide Members with the outcomes of a recent consultation on proposed Public Spaces Protection Orders;
- 2.2 To seek approval from Members to go through a final consultation on the draft PSPOs.

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 new actions 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 On 20th August 2015 E&DS approved that officers carry out a two phase consultation on the production of PSPOs for the whole South Derbyshire. At the same time they approved a shortened form of consultation in order to speed up the production of PSPOs for localised or short-term problems.
- 3.7 On 15th September 2016 a PSPO covering Swadlincote town centre was approved to address a localised and emerging problem of alcohol consumption in a part of the town centre. The PSPO has been published and is currently being proactively enforced by the Police and District Council.
- 3.8 There remain three current South Derbyshire Dog Control Orders. These were introduced in 2008 and revised in 2013 following E&DS approval. The three Orders require dog mess to be removed 'forthwith'; require dogs to be kept on a lead in 20 of the Districts parks and open spaces; and prohibit dogs entirely from 19 other open spaces (mainly enclosed play areas for children and multi-use game areas).
- 3.9 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.
- 3.10 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 (i.e. in October 2017).
- 3.11 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.

3.12 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*”.

3.13 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.

3.14 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.

3.15 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 will be issued by either a PCSO or Police Officer.

3.16 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 3.11 above are not met or that the procedural requirements for creating a PSPO were not met.

3.17 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 Outcomes

4.1 We have been through two consultation phases. The first phase was an open consultation issued in late 2015 to SDDC Members, Parish Councils, the Police and Derbyshire County Council. The second phase in spring / summer 2016 was a wider consultation with members on the public based on some of the proposals which had emerged.

4.2 The consultations consisted of inviting responses via email, through face to face questions to users of the relevant spaces under consideration and also through analysing commentary from social media conversations (specifically the I love Swad facebook page)

4.3 Following the phase 1 consultation, four proposals emerged as possible candidates for inclusion in a PSPO;

4.3.1 Prohibition of dogs from Church Gresley cemetery and requiring dogs to be kept on leads on the new sports facilities at Cockshut Lane, Melbourne;

- 4.3.2 Introduce the power to confiscate alcohol from anyone thought to be consuming it on Newall and Maurice Lea Parks, plus in the recreation grounds in Hilton and Stenson.
- 4.3.3 To make it an offence for someone, when in charge of a dog on land open to the public, to fail to show to an authorised officer that they have an appropriate means to pick up dog faeces when asked to do so.
- 4.3.4 To make it an offence for any registered owner of a vehicle to allow litter to be discarded from their vehicle.

4.4 The results of the consultation on each of the proposals were as follows;

Prohibition of Dogs from Church Gresley Cemetery

- 4.5 Under the existing Dog Control Order, owners are already required to keep their dogs on a lead in Church Gresley cemetery. This proposal would prohibit dogs from the grounds.
- 4.6 This proposal produced mainly online and email responses. Of the 40 responses 80% (32) objected to the proposals and 20% (8) approved of the proposal. Some of the main reasons for the objection to the proposal were;
- Allowing graveside access to dogs provides a great deal of benefit in the grieving process if the bereaved can visit the grave of the departed with a much loved and shared pet;
 - Many visitors to the cemetery bring their dogs and the majority are respectful. The proposals would harm the majority in order to control a minority;
 - The level of mis-use of the park is relatively low. Education and individual enforcement would be a more proportionate approach;
 - The cemetery is particularly well used by elderly dog owners, where they can stay separated from youngsters, footballs, etc. that tend to be found in other parks;
 - Incidents of alleged fouling by dogs are, in part, due to urban foxes;
 - There was general acceptance that dogs should be kept on a lead in the cemetery, as is the existing requirement under a Dog Control Order.
- 4.7 Of the responses in favour of the proposal, a number cited examples of where the existing rules were not working. Specifically where they had asked owners of dogs off the lead to comply with the existing Dog Control Order and to put their dog on a lead. A number of examples were provided of rude and aggressive responses from dog walkers.
- 4.8 Given the comments received we would recommend that a prohibition on dogs in Church Gresley cemetery would have an overall adverse impact on the local community and that it would not meet the tests necessary to justify inclusion in a PSPO.
- 4.9 There are existing powers to address irresponsible individual dog owners either through the controls under the existing Dog Control Order or through the use of Community Protection Notices. We would therefore propose to respond to the concerns raised about dog control on Church Gresley cemetery using existing powers. The consultation exercise has generated a lot of local debate and interest in

the local community and so we see this as an opportunity to tap into this interest to encourage local residents to identify existing dog owners who misuse the cemetery and therefore to try to use focused enforcement activity to change their behaviour.

Dogs on leads at Melbourne Sports Partnership, Cockshut Lane

- 4.10 Most of the feedback on this proposal was obtained through face to face interviews with users of the development during the opening day on 11th September 2016.
- 4.11 Of the responses received 52% (13) objected to the proposal and 48% (12) supported it. Due to the relatively close split in opinions we also sought the views of the Melbourne Sports Partnership management team on the proposal. The view expressed by the management team was that they would prefer that dog owners who use the sports grounds keep their dog on a lead.
- 4.12 Given the close split of local opinion on the matter we would propose that the view of the MSP management team take priority and that the proposed Public Spaces Protection Order include the requirement to keep dogs on a lead on the Melbourne sports grounds.

Extend alcohol confiscation powers to Newhall Park, Maurice Lea Park, Hilton and Stenson recreation fields

- 4.13 Following the publication of the proposals in the Stage 2 consultation, the Communities Manager undertook further investigation to establish the evidence base to support the potential for a PSPO on extending the powers for the confiscation of alcohol.
- 4.14 Anecdotal evidence was sought from local Police officers and Council staff about the frequency and extent of adult drinking on the respective parks. Whilst periodic problems with underage drinking was reported these can already be dealt with by the Police under existing powers. No substantive evidence emerged of persistent or continuing problems associated with adult drinking in any of the parks other than the historical problems in Eureka Park which led to the creation of the original Designated Public Place Order in 2010.
- 4.15 On the basis of the evidence obtained, the proposed extension of the alcohol confiscation powers to parks other than Eureka Park is not considered to meet the tests necessary to justify inclusion in a PSPO.

Requiring Dog Owners to show, on request, that they have a means of collecting dog faeces

- 4.16 Most of the feedback on this proposal was obtained through raising the proposal at the Area Forums. The proposal was also the subject of a comprehensive written submission by the Kennel Club.
- 4.17 The Senior Safer Neighbourhood Warden gave a verbal presentation on the proposal at Area Forums in spring and summer of 2016. The proposal was not the subject of a poll or voting process, however overall it was received favourably by the attendees at each of the Forum with only one objection raised.
- 4.18 The Kennel Club objected to the proposals, providing the following reasons;
- The proposal would result in punishing dog owners if they are approached at the end of a walk and have already used the bags that they have taken out for their own dog, or given a spare bag to someone who has run out;

- In certain circumstances the proposal would perversely incentivise dog walkers not to pick up after their dog if they were down to their last one or two bags;
- Provision of appropriate signage to notify communities of the offence will be problematic;
- The legal definition of 'a means' to pick up is too subjective and will be open to legal challenge;
- An irresponsible owner could simply tie one bag to his or her dog's lead or collar, but never actually use it;
- Any enforcement action based purely on the failure to have a means to pick up dog faeces would be unlikely to meet the public interest test for a criminal prosecution. Therefore there is a relatively high risk of any prosecutions for the offence failing in court.

4.19 As evidenced by independent environmental surveys, levels of dog fouling in South Derbyshire are not excessive. Given this and in the light of the objections we do not consider that the proposal meets the tests necessary to justify inclusion in a PSPO.

4.20 We are aware that this proposal has been recently been adopted in a number of other local authorities PSPOs, notably Daventry, East Herts and Harborough District Councils. We would therefore propose to monitor whether the proposals have a benefit on dog control in these authorities and to use their experience of the potential pitfalls of the requirements.

4.21 In the meantime Safer Neighbourhood Wardens will informally ask dog walkers to provide evidence that they have the means to pick up after their dog when they undertake patrols of the Districts parks and open spaces.

4.22 If the evidence from other Councils indicate that the legal uncertainties can be overcome and our own investigations establish that there is a need to require this of our local dog walking community then we would propose to come back to Committee at a future date to enable Committee to make a better informed decision.

Offence for any registered owner of a vehicle to allow litter to be discarded from their vehicle

4.23 Most of the feedback on this proposal was obtained through the Area Forums. The Senior Safer Neighbourhood Warden gave a verbal presentation on the proposal at Area Forums in spring and summer of 2016. The proposal was not the subject of a poll or voting process, however overall it was received favourably by the attendees at each of the Forum.

4.24 The proposal will enable the local authority to make the registered owner of a vehicle culpable for litter thrown from the vehicle by any passenger riding in or on it. There already exists in law the ability for enforcement officers to make the registered keeper of a vehicle culpable for flytipping incidents associated with the vehicle. The extension of this power to littering offences has been discussed at national level, however no firm proposals have yet been forthcoming to make this law.

4.25 A number of Safer Neighbourhood Warden investigations into littering offences from vehicles have been frustrated due to the inability to identify the culpable individual. In particular the proposal is seen as a potentially valuable tool in dealing with littering from stationary vehicles at known hot spots.

4.26 Officers consider that the proposal meets the tests necessary to justify inclusion in a PSPO.

Existing Dog Control Orders and Designated Public Places Order

4.27 As discussed in paragraphs 3.8 to 3.10 above, a number of controls currently exist within Dog Control Orders and a Designated Public Places Order. We have seen no evidence during the operation of these Orders or during the consultation exercise that any of the existing controls are inappropriate and we therefore intend to replicate all of these in the new PSPOs.

5. Financial Implications

5.1 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.

6. Corporate Implications

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

7. Community Implications

7.1 None

8. Conclusion

8.1 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.