
REPORT TO:	ENVIRONMENTAL AND DEVELOPMENT SERVICES	AGENDA ITEM: 6
DATE OF MEETING:	10 NOVEMBER 2022	CATEGORY: RECOMMENDED
REPORT FROM:	MATT HOLFORD, HEAD OF ENVIRONMENTAL SERVICES	OPEN
MEMBERS' CONTACT POINT:	DENNIS BATEMAN, PRINCIPAL COMMUNITY SAFETY ENFORCEMENT OFFICER	DOC:
SUBJECT:	PUBLIC SPACES PROTECTION ORDERS	REF:
WARD(S) AFFECTED:	All	TERMS OF REFERENCE: EDS14

1. Recommendations

- 1.1 That the Committee approves the proposed three-year extension of seven Public Spaces Protection Orders for South Derbyshire as detailed in the report.

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 seven existing Public Spaces Protection Orders for the maximum permissible three-year period.

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 nine 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. A prohibition on access to land off Staker Lane, Findern to prevent fly tipping;
 6. A limitation on access to Lowes Lane, Swarkestone to prevent fly tipping;
 7. Eureka Park PSPO to control aspects of ASB in Eureka Park;
 8. Maurice Lea Park PSPO, to control aspects of ASB in the park;
 9. The Swadlincote Town Centre PSPO to control aspects of town centre ASB.
- 3.12 The PSPOs numbered 1 to 7 in paragraph 3.11 all expire in January 2023. This report seeks Committee approval to extend all of these seven PSPOs in their current form to 2026. PSPOs numbered 8 and 9 are outside the scope of this Committee Report.

- 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 7 in paragraph 3.11 above. In the opinion of officers, the community effect of all seven of these PSPOs has been positive and there is objective evidence to justify the continuation of all seven Orders.

3.15 Consultation

- 3.16 Consultation on the proposed extension of the PSPOs was carried out between 1 September and 30 September 2022.
- 3.17 The consultation consisted of seeking responses from all statutory consultees plus direct contact was also made with all Parish Councils and District Councillors to seek their views. Contact was also made with the small number of residents who have complained about the PSPOs since they were last made.
- 3.18 A consultation page and questionnaire were published on the Councils website and the consultation was publicised through the Councils social media portals.
- 3.19 There was minimal feedback through the website – three responses were received, all of which were supportive.
- 3.20 Feedback from all of the statutory consultees, Parish Councils and District Councillors were all supportive of the proposals.
- 3.21 A number of Parish Councils made requests for additional land to be included within the existing PSPOs. Proposals to extend the existing PSPOs are not within the scope of this report and will need to be considered separately. These may be the subject of subsequent reports to this Committee depending on the outcome of the considerations.
- 3.22 There have been two responses from members of the public that are worthy of mention and can be considered as challenges to the proposed Orders.
- 3.23 The first response relates to the limitation of access to Lowes Lane, Swarkestone. The implementation of the Lowes Lane PSPO involved the installation of a gate which restricts vehicle access other than for permitted purposes. The Order specifically states that there is no prohibition on pedestrian, equine or bicycle access to the area to which the Order relates.
- 3.24 When the access gate is closed, there is an alternative access point available for pedestrian, equine and bicycle traffic which measures approximately 106cm (42inches) in width. The objector is seeking to get this access point increased to a minimum of 153cm (60 inches).
- 3.25 In order to meet the request, the existing gate will need to be located which is likely to involve significant cost.
- 3.26 For the purposes of this report, this is not an objection to the renewal of the Lowes Lane Order. Is a complaint about the way in which the Order has been implemented and it can therefore be considered outside the subject of this report.

- 3.27 Secondly, an objection has been raised in relation to the Dogs on Lead PSPO and more specifically to the inclusion of the entirety of the Melbourne Sports Partnership grounds in this PSPO.
- 3.28 The objector has objected to the inclusion of the Melbourne Sports Partnership grounds in the dogs on lead PSPO in its current form for the following reasons;
- The consultation on the original proposed declaration of the MSP as being 'dogs on leads' generated a relatively small response, and there was a small majority against the PSPO being introduced
 - The existing PSPO imposes an unreasonable restriction on the ability for dog owners to provide reasonable exercise for their pets.
 - The PSPO does not take sufficient account of accessibility concerns for those exercising dogs in Melbourne who need to do so on relatively flat ground, either because of limited mobility or having young families in pushchairs etc. The objector states that there are very limited options for this in Melbourne.
 - The objector states that he regularly observes dogs being exercised off the lead on the MSP grounds.
- 3.29 The objector makes the observation that the Order could instead limit the particular places dogs can go off the lead in the MSP grounds and/or that the Order could impose particular times at which dogs can be exercised off leads on the grounds.
- 3.30 The inclusion of the MSP grounds in the dogs on lead Order was considered by this Committee on 17 November 2016. Committee agreed, having considered the outcomes from the public consultation exercise, to include the MSP grounds in the dogs on lead PSPO.
- 3.31 In relation to the consultation both the Melbourne Sports Partnership and the Melbourne Parish Council support the renewal of the Orders in their existing form.

4. Financial Implications

- 4.1 Effective enforcement of all of the existing PSPOs can be delivered within existing budgets.
- 4.2 Enforcement of the PSPOs generates a small quantity of income – usually in the region of £500 to £1,000 a year. This is not expected to change significantly if the proposals in this report are approved.

5. Corporate Implications

Employment Implications

- 5.1 None.

Legal Implications

- 5.2 Minor. The extended PSPOs will all be subject to possible appeal to the High Court for a period of up to 6 weeks after the new Orders are made.

Corporate Plan Implications

- 5.3 The proposals align with the key priority of “Our Environment” and the key aim of this priority to “Reduce fly tipping and litter through education, engagement and zero tolerance enforcement action where appropriate”.
- 5.4 The proposals align with the key priority of “Our People” and the key aim of this priority to “Help tackle anti-social behaviour and crime through strong and proportionate action”.

Risk Impact

- 5.5 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 The consultation process carried out complies with the requirements of the Act. All of the PSPOs were the subject of extensive public consultations before they were approved and the detail of all of these public consultations are set out in the relevant Committee reports which approved each of the respective PSPOs.

Equality and Diversity Impact

- 6.3 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

- 6.4 Beneficial.

Environmental Sustainability

- 6.5 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 seven PSPOs referred to at points 1 to 7 of paragraph 3.11 for a further three years.

8. Background Papers

- 8.1 Environment & Development Services Committee, 14 November 2019.
- 8.2 Environment & Development Services Committee, 15 August 2019.

- 8.3 Environment & Development Services Committee, 16 August 2018.
- 8.4 Environment & Development Services Committee, Public Spaces Protection Orders under the Anti-Social Behaviour, Crime and Policing Act 2014, 17 November 2016
- 8.5 Environment & Development Services Committee, Public Spaces Protection Orders and Fixed Penalty Notice sanctions under the Anti-Social Behaviour, Crime and Policing Act 2014, 20 August 2015
- 8.6 Environment & Development Services Committee, Revision of the South Derbyshire Dog Control Order, 4 October 2012
- 8.7 Environment & Development Services Committee, Revision of the South Derbyshire Dog Control Order, 31 May 2012