

Environment PDG
10 March 2020

PUBLIC SPACES PROTECTION ORDER - DOGS

Cabinet Member(s): Cllr Luke Taylor, Cabinet Member for the Environment
Responsible Officer: Vicky Lowman, Environment & Enforcement Manager
Stuart Noyce, Group Manager - Street Scene and Open Spaces

Reason for Report: To consider widening enforcement powers, in order to deliver a cleaner and more sustainable environment across the District within the Mid Devon District Council Boundary.

To replace current dog control powers across the District which are due to expire in October 2020.

RECOMMENDATIONS:

That the PDG recommends to Cabinet:

1. To give authority to consult with members of the public and other relevant stakeholders to introduce a Public Spaces Protection Order (PSPO) under Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014.
2. To set the fixed penalty for breach of the order at the maximum level permitted of £100.

Financial Implications: Whilst a consequence of enforcement may be an increase in Fixed Penalty Notices, income generation is not a reason for introducing a new PSPO.

Budget and Policy Framework: The Council already has measures to control dogs and the proposed draft PSPO is to ensure that this can continue.

Legal Implications: The current PSPO is due to expire in October 2020. If a new PSPO is not adopted by then, Officers will not be able to enforce the current measures designed to curb anti-social behaviour arising from dog fouling and other matters set out in the new draft order. .

Risk Assessment: As the legalisation changes and our policies are not updated this may leave the Council at risk of not being able to enforce infringements which could result in reputational damage for not taking appropriate action against offenders.

Equality Impact Assessment: The equality issues are addressed through exemptions – see part 8 of this report.

Relationship to Corporate Plan: The Street Scene Enforcement Service is a frontline service which works throughout the District ensuring cleanliness and attractiveness of our public realm through both education and enforcement.

Impact on Climate Change: PSPOs require or prohibit certain activities from taking place in certain places (restricted areas) in order to prevent or reduce any detrimental effect caused by those activities to local surroundings and people.

1.0 Introduction

- 1.1 The Council has used dog control orders made under the Clean Neighbourhood and Environment Act 2005. These became PSPOs under transitional provisions in the Anti-social Behaviour Crime and Policing Act 2014, but these PSPOs will expire in October 2020
- 1.2 The Street Scene, Education & Enforcement Team have undertaken an internal review and have instructed Legal Services to produce a draft PSPO order. This is attached as Appendix A. Plans have been produced by the Mid Devon District Council GIS team and form part of Appendix A.
- 1.3 PSPOs are available to Local Authorities to deal with specific nuisance problems, in particular areas that are having, or are likely to have, a detrimental effect on the quality of life for those who live, work or play within the locality. An order can prohibit or restrict certain activities and is designed to ensure that the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.

2.0 The draft Public Spaces Protection Order

- 2.1 The following guidance is provided to aid understanding of the draft PSPO order .The order is drafted to achieve four main objectives-
 1. Dog fouling
 2. Dogs on leads in
 - a) cemeteries,
 - b) parks,
 - c) when requested by an authorised officer or police constable,
 3. Exclusion of dogs from play areas
 4. Limiting the number of dogs walked at a time by one person

Prohibiting dog fouling

- 2.2 The draft order prohibits dog fouling in certain areas within the district of Mid Devon. The areas where dog fouling is prohibited are known in the order as “Public Spaces” which is a defined term. The term “Public Spaces” is defined at clause 1.1 of the draft order to mean land within the district of Mid Devon, which is open to the air including covered land which is open on at least one side and to which the public are entitled and permitted to have

access, with or without payment, with the exception of Forestry Commission Land. The district of Mid Devon is shown in Schedule A in the draft order.

- 2.3 Clause 5.1.1 of the draft order proposes that in any Public Space if a dog defecates at any time the person in charge of the dog must remove the faeces from the land forthwith. Clause 5.1.2 of the draft order proposes that a person in charge of a dog must have the appropriate means to pick up the faeces and must produce this if required to do so by an authorised officer or a police constable. The local authority provide bins in parks and many other public areas which may be used by dog owners. If there is not a bin around, it should be taken home.
- 2.4 This is a control measure to further assist with tackling dog fouling concerns. Authorised officers may approach dog owners and request them to produce a device for (or other suitable means of) removing dog faeces and transporting it to a bin (whether or not the dog has defecated). If the owner fails to produce this on request then provided it is on designated land and the offender is not exempted it would be considered an offence.

Dog on Leads

- 2.5 Clause 6 of the draft order deals with the requirement of dogs on leads. Dogs must be on leads if any of the following apply:
1. In any public cemeteries which are listed in Schedule B to the order and shown on the relevant plans to the order
 2. In any public parks which are listed in Schedule C to the order and shown on the relevant plans to the order
 3. If requested by an authorised officer or a police constable

Excluding Dogs from children's play areas

- 2.6 Clause 7 of the draft excludes dogs from children's play areas which are listed in Schedule D and shown on the relevant plans to the order. An offence is committed if an individual in charge of a dog at any time takes a dog onto, or permits the dog to enter or remain on, any land to which this part of the Order applies.

Limit on the number of dogs

- 2.7 This part of the order limits the number of dogs a person can be in control of in a public place - unless he/she has reasonable excuse or he/she has permission from the owner of the land on which the dogs are being walked/exercised. Clause 8.1 of the draft order provides that four dogs is the maximum number of dogs that can be walked at one time. This is to minimise the risk of the dog walker not having full control of the dogs. The draft also sets out the penalties for failing to comply with the order and specific exemptions from the order.

3.0 Plans of the land covered by the Order

3.1 The first part of the draft order prohibits dog fouling in public spaces within the district of Mid Devon. The district of Mid Devon is shown in the plan attached to the draft order in Schedule A.

3.2 Secondly, dogs must be on leads if they are within any of the public cemeteries which are listed in Schedule B and shown on the relevant plan to the order. The following public cemeteries are proposed for this restriction:

St Matthews Cheriton Fizpaine
Black Dog Crediton
Crediton
Colbrooke
Wembworthy
Halberton
Bradninch
All Saints Culmstock
Culmstock
Hemyock
St Mary's Hemyock
Uffculme
Uffculme (War Memorial)
St Mary's Uffculme
St Andrews Cullompton
Tiverton
St Mary's Willand
Willand Parish Cemetery

3.3 The draft order also requires that dogs be on leads in the following parks and open spaces. Plans of the parks and open spaces can be found in the attached order at Schedule C:

Beacon Park Crediton
Cromwells Meadow Crediton
Chawleigh Chumleigh
Newcombes Meadow Crediton
Peoples Park Crediton
Queen Elizabeth Drive Crediton
School Road Silverton
Southfield Drive Crediton
St Lawrence's Green Crediton
Victoria Crescent Crediton
Crossparks Cullompton
Crow Bridge Cullompton
Forcefield Road Cullompton
Meadow Lane Cullompton

Stoneyford Cullompton
Landunvez Place Bradninch
High Bullen Silverton
Great Close Culmstock
Millhayes Meadows Hemyock
Church Road Silverton
Amory Park Tiverton
Bluebell Avenue Tiverton
Blundells Road Tiverton
Burma Star Garden Tiverton
Cottey Brook Tiverton
Cranmore View Tiverton
Cudmore Park Tiverton
Glebelands Road Tiverton
Gornhay Lane Tiverton
Graters Copse Tiverton
Moutbatten Road Tiverton
Oak Close Tiverton
Old Park Tiverton
Palmerston Park Woods Tiverton
Peoples Park Tiverton
Phoenix House Tiverton
St Andrew Street Tiverton
Railway Walk Tiverton
River Exe Recreation Tiverton
Starkey Close Tiverton
The Oval Tiverton
Tidcombe Railway Walk Tiverton
Tree Field Tiverton
West-Exe Recreation Ground Tiverton
Ashley Close Uffculme
Culm Valley Uffculme
Chesnut Drive Willand
Gables Lea Willand
Sycamore Close Play Area Willand
Victoria Close Willand
Willand Moor Road Willand

- 2.4 The draft order prohibits a person in charge of a dog from taking the dog (or permitting it to enter) into the following enclosed children's play areas Schedule D:

Barns Close Bradninch
Townlands Bradninch
Station Road, Bray Close Burlescombe
Barnfield Credtion
Chaffinch Drive Credtion
Churchlands Bow Crediton
Fernworthy Copplestone

Fulda Crescent Crediton
Glebelands Cheriton Bishop
Godfreys Garden Bow
Greenaway Morchard Bishop
Greenway Crediton
Lapford Play Area Crediton
Lords Meadow Crediton (1)
Lords Meadow Crediton Skate Park Crediton
Lords Meadow Crediton
New Buildings Sandford Crediton
Queen Elizabeth Drive Crediton
Spinning Path Gardens Crediton
St Martins Close Bow
Sunnymead Copplesstone
Town Barton Sanford Crediton
Tuckers Meadow Crediton
Walnut Drive Crediton
Ash Drive Cullompton
Bockland Close Cullompton
Dove Close Cullompton
Conifer Close Cullompton
Haymans Close Cullompton
Haymans Green Cullompton
Headweir Road Cullompton
Knightwood Cullompton
Larks Drive Cullompton
Linden Road Cullompton
Ploudal Road Cullompton
Rivermead Cullompton
Siskin Chase Cullompton
Spindlebury Road Cullompton
Starlings Roost Cullompton
Tanners Close_Clover Drive Cullompton
Tufty Park Cullompton
Water Meadow Cullompton
Ellahayes Hele
Logan Way Hemyock
Millhayes Hemyock
Cornlands Sampford Peverell
Amory Park, Tiverton
Ashley Rise Tiverton
Banksia Close Tiverton
Coles Mead Tiverton
Cotteylands _ Cameron Close Tiverton
Cudmore Park Tiverton
Everett Place Tiverton
Halsbury Road Tiverton
Hawthorne Road Tiverton
Orchard Leigh Tiverton

Palmerston Park Tiverton
Primrose Close Tiverton
Priory Road Tiverton
Puddington Play Area
Queensway Tiverton
Spencer Drive Tiverton
Starkey Close Tiverton
The Hams BMX Track Tiverton
Tiverton Adventure Playground
Trickey Close Tiverton
Waylands Road Tiverton
West-Exe Recreation Ground & Pool Tiverton
Wilcombe Tiverton
Culm Valley Way Uffculme
Pathfields Uffculme
Pippins Field Uffculme
Harpitt Close Willand
Mallow Court Willand
Orchard Way Willand
Recreation Ground Willand
South View Willand
Victoria Close Willand
Worcester Crescent Willand

4.0 Legal Implications

- 4.1 Under the Anti-social Behaviour, Crime and Policing Act 2014, a Local Authority, after consultation with the public, Police, Crime Commissioner and other relevant bodies, are able to make a Public Spaces Protection Order (PSPO), if evidence of a nuisance exists. Under Section 59 of the Act, a Local Authority may make a PSPO if satisfied on reasonable grounds that two conditions are met.
- 4.2 The first condition is:
- a) 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
 - b) It is likely that activities will be carried on in a public place within that area and that they will have such an effect.
- 4.3 The second condition 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 Order.
- 4.4 A Public Spaces Protection Order identifies the public place referred to and sets out a number of conditions, such as;
- a) Prohibiting specified things being done in the area,

- b) Requiring specified things to be done by persons carrying on specified activities in that area, or
 - c) Covering both of those prohibitions.
- 4.5 Prohibitions or requirements may be imposed if they are reasonable to impose through the order –
- a) To prevent the detrimental effect referred to from continuing, occurring or recurring, or
 - b) To reduce the detrimental effect or to reduce the risk of its continuance, occurrence or recurrence
- 4.6 An interested person may appeal to the High Court to question the validity of a PSPO, or a variation of an Order. An appeal must be made within the period of 6 weeks beginning with the date on which the Order or variation is made. Articles 10 and 11 of the Human Rights Act 1998 regarding freedom of expression and freedom of assembly and association have been considered and no issues have been identified.
- 4.7 The Council must satisfy its public sector equality duties under the Equality Act 2010 and at the same time as or following the outcome of consultation it will be necessary to undertake an Equality Impact Assessment to ensure that the Council has properly understood and assessed the potential impact of the proposed PSPO in terms of equality issues.
- 4.8 The enforcement of breaches of the order will be initially enforced through the use of a fixed penalty notice and then to criminal prosecution in the Magistrates' Court if not paid.

5.0 Reason for Recommendations

- 5.1 The Council receives a significant number of complaints about dog fouling and out of control dogs in public places each year. In 2017/18, there were more than 100 reports to the authority in relation to dog fouling.
- 5.2 PSPOs are available to local authorities to deal with specific nuisance problems in particular areas that are, or are likely to have a detrimental effect on the quality of life of people in the area.
- 5.3 Dog fouling is unsightly and unpleasant and in turn can lead to serious illness in humans, such as Toxocariasis, from direct contact with the faeces on the ground which can also lead to blindness. Particular concern is raised in relation to children and sports users using parks and open spaces

6.0 Consultation Process

- 6.1 Consultation with residents and relevant stakeholders will take place before a final decision on the PSPO is made. This will allow the Council to introduce orders, which are relevant, necessary and consistently enforced across Mid

Devon within the Mid Devon District Council boundary. The following will be consulted:

- All Parish & Town Councils in Mid Devon
- Chief Constable of Devon Cornwall Police
- Police & Crime Commissioner
- All neighbouring Local Authorities
- Operational Managers of all Council departments within Mid Devon District Council
- Community Centres
- The Assembly Members and Members of Parliament
- All Councillors
- Ramblers & Walking Groups
- Animal Welfare Groups
- The Kennel Club
- Boarding Kennels within the Mid Devon district.
- Sports Clubs
- Members of the public.

6.2 The consultation will include opening and closing dates of when consultees can respond on this matter and will take place, according to the consultee, via:

- Letters
- Mid Devon District Council's website
- Newspaper Advert
- Email

For those who cannot access the internet, other options will be advertised, such as the option to send a letter or e-mail. Officers may also decide to undertake direct consultation in a number of parks and public space areas during the consultation period to ensure views from users are captured.

6.3 Mid Devon District Council will also consult with the owners and occupiers of the land affected as far as practicable.

7.0 Enforcement

7.1 For breaches of the PSPO, the Council may issue a fixed penalty notice in order to provide an alternative to prosecution. The proposed penalty of £100 is designed to maximise the deterrent. The fixed penalty is not payable on the spot but must be paid within 14 days. If there is a refusal to pay the fixed penalty, the case may be taken to court – with a potential fine of up to £1000 plus costs.

8.0 Exemptions

- 8.1 Clause 10 of the PSPO sets out certain exemptions. These cover those needing assistance dogs or with some form of disability which might prevent them from complying with the Order. There are also exemptions for certain working dogs i.e. those involved in law enforcement, military duties, statutory emergency services and search/rescue.

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