

PUBLIC SPACES PROTECTION ORDER - DOGS

Cabinet Member(s): Cllr Colin Slade, Cabinet Member for the Environment
Responsible Officer: Vicky Lowman, Environment & Enforcement Manager

Reason for Report and Recommendations: This report sets out the key findings from the consultation on a Public Spaces Protection Order (PSPO) for the Mid Devon area which ran from 12 May to 17 July 2020, to update the Environment PDG (and the Cabinet) on the feedback received from the PSPO public consultation and to seek approval on a Revised PSPO to be made in response to the consultation.

RECOMMENDATION: that Cabinet be asked:

- 1. To agree the making of the PSPO in accordance with the draft attached at Appendix A and the Schedules to it.**
- 2. To authorise the Head of Legal (Monitoring Officer) to make the PSPO and take all necessary steps to bring it into force.**

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. There will be no other costs incurred as the District Officers are already carrying out dog fouling allocated days as part of their discretionary hours.

Budget and Policy Framework: The Council already has measures in place to control dogs under dog control orders made under the Clean Neighbourhood and Environment Act 2005. These dog control orders expire on the 19th October 2020. The proposed making of the PSPO is to ensure approved measures continue to control dogs with a minimum of interruption. There will be cost implications for signage on the new areas listed.

Legal Implications: The current PSPO is due to expire on the 19th October 2020. If a new PSPO is not adopted by that date, officers will not be able to enforce the current measures designed to curb anti-social behaviour arising from dog fouling and other matters until such time as the new Order is in place. Any Order approved by the Council is for a period of no more than 3 years, but in practice it may be appropriate to make new orders on a more frequent basis, either to remove or add new measures or protected spaces.

Risk Assessment: As the legislation 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. We will also be at risk of not meeting statutory duties.

Equality Impact Assessment: The equality issues are addressed within the draft order, part 8 of which states Clause 10 of the draft 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.

Relationship to Corporate Plan: The street scene enforcement service works throughout the District, ensuring cleanliness and attractiveness of our public realm through both education and enforcement. The policies that are enforced by the street scene team contribute to the environment aspects of the corporate plan.

Impact on Climate Change: There are no climate change implications associated with this project. However, reduced levels of dog related anti-social behaviour improve the attractiveness and pleasantness of our open spaces. PSPOs are an established method of reducing levels of anti-social behaviour.

1.0 INTRODUCTION/BACKGROUND

1.1 The Council had 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 automatically expire on the 19th October 2020.

1.2 The Street Scene, Education & Enforcement Team undertook an internal review and has requested support from Legal Services to produce a draft PSPO which is attached at Appendix B of this report (hereinafter referred to as the "Consultation Draft PSPO"). Cabinet, on the 23 April 2020 resolved that the Consultation Draft PSPO should go out to consultation before a decision was made whether to make the PSPO.

1.3 The Anti-social Behaviour Crime and Policing Act 2014 (the Act) provides local authorities with a set of powers, including PSPOs, to prevent and reduce anti-social behaviour which have a negative or detrimental impact on the local community and the local community's quality of life. A PSPO can require or prohibit certain activities from taking place in certain places in order to prevent or reduce any detrimental effect caused by those activities to local people. A local authority can only make a PSPO if it is satisfied on reasonable grounds that the following conditions have been met:-

1.3.1 The activities carried on in the public place have or are likely to have a detrimental effect on the quality of life of those in the locality, or it is likely that activities will be carried on in a public place in that area and that they will have such an effect; and

1.3.2 The effect of the activities are, or are likely to be, of a persistent or continuing nature such as to make them unreasonable and justifying any restrictions or requirements imposed in the PSPO.

1.4 Although there have been several educational interventions to tackle people who allow their dogs to foul public spaces and do not pick up after them, there continue to be issues in the district with irresponsible dog ownership, specifically where dog faeces is not being removed. The Council is aware that the majority of dog owners are responsible and control their dogs in public spaces, however there is still a significant minority of people who do not take

full responsibility for their animals, who are willing to put public health at risk and who and ignore the Council's bylaws. Consequently, a significant number of complaints are continuing to be received by the Council in relation to dog fouling.

- 1.5 Currently, the Enforcement Officers will approach a dog walker and ask whether they are carrying dog bags. If they are not, the Enforcement Team will give advice and remind them that it is offence not to pick up dog mess. At the moment, our officers are unable to enforce this requirement.

2.0 CONSULTATION

- 2.1 The Consultation Draft PSPO went out to public consultation from 12 May 2020 to 17 July 2020. It is now not recommended that the Consultation Draft PSPO is made, approved and enacted but instead a revised draft PSPO, which can be found at appendix A, (the "Revised Draft PSPO") is made.

- 2.2 The purpose of the consultation was to seek views on the Council's intention to implement a new PSPO in relation to dog controls within the Mid Devon District Council boundary. As a result of the views expressed in the consultation exercise it is recommended the Revised Draft PSPO is now made. The overarching responses are set out below in section 3 of this report, but the specific comments are to be found in the spreadsheet accompanying this report (Appendix B). As members will note, some of the key/common concerns expressed were:

- Dogs require off lead exercise and not everyone has access to a vehicle to drive to a rural location without livestock to give their dog/s off lead exercise.
- A dog that is not appropriately exercised is far more likely to display "bad" behaviour, such as barking, or aggressive behaviours
- Well behaved dogs should have freedom to walk off the lead when they are supervised by an adult responsible walker
- Dogs should be on leads in ANY public space
- Large dogs hard to control - some dog walkers use very long leads and they roam many yards and intimidate other users of the spaces. If households choose to keep more than two dogs, they can walk them separately.

- 2.3 The main provisions of the Revised Draft PSPO (which were also contained in the Consultation PSPO) are as follows:-

2.3.1 To require in any public spaces that if a dog defecates at any time, the person in charge of the dog must remove the faeces from the land forthwith;

2.3.2 To require in any public spaces that a person in charge of a dog must have with them an appropriate means to pick up any faeces deposited by that dog, and must produce this if requested to do so by an Authorised Officer or Police Constable;

2.3.3 "Public spaces" means 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;

- 2.3.4 In all public spaces a person in charge of a dog, at any time, must put and keep the dog on a lead and keep it under proper control when directed to do so by an Authorised Officer or Police Constable;
 - 2.3.5 A person in charge of a dog is prohibited from taking that dog onto, or permitting the dog to enter or remain on any enclosed children's play area listed in section 5 of this report;
 - 2.3.6 In any of the public cemeteries listed and shown in Schedule B of the Consultation Draft PSPO, any person in charge of a dog, at any time, must put and keep the dog on a lead and under proper control;
 - 2.3.7 In any of the of public parks listed and shown in Schedule C of the Consultation Draft PSPO, any person in charge of a dog, at any time, must put and keep the dog on a lead and under proper control;
 - 2.3.8 No person in any public spaces shall be in charge of more than 4 dogs at any time.
- 2.4 The Revised Draft PSPO is centred on improving and protecting the local area for people residing, working, trading and visiting the area. The Council values public opinion on this action which seeks to strengthen communities and partnerships to improve our environment, reduce crime and to develop a sense of pride and safety for where people live and work.
- 2.5 Following a request from Willand Parish Council, plan 63 - Sycamore Play area Willand, has been removed from Schedule C Parks and Open Spaces.
- 2.6 No other changes have been made following the consultation however members are able to make recommendations

3.0 CONSULTATION RESULTS

3.1 Part A – Dog fouling

The Consultation Draft PSPO prohibited 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' means all 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. Forestry Commission land is excluded. The district of Mid Devon is shown in Schedule A in the draft order.

3.1.1 The two controls in Public Spaces proposed are:

- You must pick up your dog's faeces, and
- You must always have something to pick up the faeces with, eg bags, and produce evidence of this if asked by an Enforcement Officer or the Police.

Q1	Do you agree that those in charge of a dog (owners and walkers), should pick up their dog's faeces in Public Places (as defined)?		
		Number	Percentage
	YES	682	99.13%
	NO	6	0.87%

Q2	Do you agree that every person in charge of a dog (owners and walkers) should carry enough bags or other means to pick up after the dog?		
		Number	Percentage
	YES	667	98.38%
	NO	11	1.62%

3.2 Part B – Dogs on leads

3.2.1 This is a control measure to further assist with tackling dog fouling concerns. Between April 2019 and March 2020, 128 reports had been logged in relation to aggressive behaviour from dogs, both on and off leads within public areas. These reports ranged from growling dogs/aggressive behaviour to dog on dog/person attacks.

3.2.2 The Consultation Draft PSPO required dogs to be on leads in any of the following scenarios:

- In public cemeteries which are listed in Schedule B to the Consultation Draft Order and shown on the relevant plans to the draft
- In public parks which are listed in Schedule C to the Consultation Draft Order and shown on the relevant plans to the draft
- If requested by an authorised officer or a Police Constable
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Q3a	Do you agree that dogs should be kept on leads In the named public cemeteries?		
		Number	Percentage
	YES	606	88.99%
	NO	75	11.01%
Q3b	Do you agree that dogs should be kept on leads? In the named public parks		

		Number	Percentage
	YES	347	49.78%
	NO	350	50.22%

Q3c	Do you agree that dogs should be kept on leads If requested by an Enforcement Officer or the Police??		
		Number	Percentage
	YES	587	86.83%
	NO	89	13.17%

3.3 Part C – Excluding dogs from children’s play areas

3.3.1 The Council already has dog control orders in place excluding dogs from certain play areas and is now proposing to bring that restriction into the PSPO. The play areas are listed in Schedule D to the Order and shown on the relevant plans.

Q4	Do you agree that dogs should be excluded from the named Children's play areas		
		Number	Percentage
	YES	561	85.52%
	NO	95	14.48%

3.4 Part D – Limit on the number of dogs

3.4.1 The Council is concerned about dog owners and walkers having sufficient control of their dogs whilst they are being walked or exercised in Public Spaces (as defined). The proposal is to set a maximum limit of 4 dogs per owner/walker at any one time. There is an exception of reasonable excuse and also where the owner of the land has given permission.

Q5	Do you agree that a limit should be set on the number of dogs under the control of the owner/walker when in Public Spaces?		
		Number	Percentage
	YES	499	77.24%
	NO	147	22.76%

Q6	Do you agree that the limit should be set at 4 dogs		
		Number	Percentage
	YES	347	53.72%
	NO	299	46.28%

3.5 Part E – Additional questions

Q7	Do you have any alternative or additional proposals on dog controls		
		Number	Percentage
	YES	334	47.04%
	Skipped question	376	52.96%

Q8	Are there additional areas that need to be added or removed to/from the draft order?		
		Number	Percentage
	YES	265	37.27%
	Skipped	446	62.73%

Q9	Are there any adverse impacts to the proposals which you wish highlight?		
		Number	Percentage
	YES	245	34.51%
	Skipped	465	65.49%

Q10	Do you agree that the Fixed Penalty amount for any breaches of the PSPO should be £100 (the maximum permissible under the legislation)?		
		Number	Percentage
	YES	473	74.72%
	NO	160	25.28%

Q11	Do you own or walk dogs?		
		Number	Percentage
	YES	484	74.01%
	NO	170	25.99%

Q12	Do you walk dogs in Mid Devon?		
		Number	Percentage
	YES	488	74.62%
	NO	166	25.38%

3.6 Following a request from Willand Parish Council, plan 63 - Sycamore Play area Willand, has been removed from Schedule C Parks and Open Spaces.

3.7 The Revised Draft PSPO therefore differs from the consultation draft by incorporating the changes set out in paragraph 3.6. Members are invited to consider, in light of the consultation, whether they wish to make further

changes to the Revised Draft PSPO in response to the consultation - but subject to advice on the implications of making such changes. For example, adding in a new area would give rise to a legitimate expectation of further consultation. It is suggested that, if members were thinking along those lines, that this would be something to pursue in a fresh PSPO at a future date.

4.0 ENFORCEMENT

4.1 If the Order is made, consideration will also need to be given to enforcement as there will be raised expectations from the public which will need to be managed. A stepped and proportionate approach to sanctions will need to be developed. The Council's enforcement policy must be followed in all instances.

4.2 If the amount of time spent on statutory and mandatory duties remains unchanged a total of 300 discretionary annual hours will be allocated to discretionary duties such as litter enforcement, compulsory recycling, Cleansing inspections and dog fouling patrols.

Duties	Allocation of Remaining Time
Compulsory Recycling	40%
Cleansing Inspections	10%
Litter Patrols	40%
Dog Fouling Patrols	10%

4.3 Although PSPOs are made by the Council, enforcement should be the responsibility of a wider group. Council officers will be able to enforce the restrictions and requirements, as will other groups that they designate, including officers accredited under the community safety accreditation scheme. In addition, Police officers and PCSOs will have the ability to enforce the order.

5.0 District of Mid Devon

Plan 1 – Map of District

5.1 Public Cemeteries

Plan 2 – St Matthews Cheriton Fizpaine

Plan 3 – Black Dog Crediton

Plan 4 – Crediton

Plan 5 - St Andrews Colbrooke

Plan 6 - Wembworthy

Plan 7- Halberton

Plan 8 Bradninch

Plan 9 - All Saints Culmstock

Plan 10 – Culmstock
Plan 11 - Hemyock
Plan 12- St Mary’s Hemyock
Plan 13 – Uffculme
Plan 14 - Uffculme
Plan 15- St Mary’s Uffculme
Plan 16- St Andrews Cullompton
Plan 17 – Tiverton
Plan 18 - St Mary’s Willand
Plan 19 - Willand Parish Cemetery

5.2 **Parks & Open Spaces**

Plan 20 - Amory Tiverton
Plan 21 – Ashley Close Uffculme
Plan 22 Beacon Park Crediton
Plan 23 - Bluebell Avenue
Tiverton Plan 24 - Blundells
Road Tiverton
Plan 25 - Burma Star Garden Tiverton
Plan 26 - Chawleigh Chumleigh
Plan 27 - Chestnut Drive Willand
Plan 28 - Church Road Silverton
Plan 29 - Cottey Brook Tiverton
Plan 30 - Cranmore View Tiverton
Plan 31 - Cromwells Meadow Crediton
Plan 32 - Crossparks Cullompton
Plan 33 - Crow Bridge Cullompton
Plan 34 - Cudmore Park Tiverton
Plan 35 - Culm Valley Uffculme
Plan 36 - Forcefield Road Cullompton
Plan 37 - Gables Lea Willand

Plan 38 - Glebelands Road Tiverton
Plan 39 - Gornhay Lane Tiverton
Plan 40 - Graters Copse Tiverton
Plan 41 - Great Close Culmstock
Plan 42 - High Bullen Silverton
Plan 43 - Landunvez Place Bradninch
Plan 44 - Meadow Lane Cullompton
Plan 45 - Millhayes Meadows Hemyock
Plan 46 - Moutbatten Road Tiverton
Plan 47 - Newcombes Meadow
Crediton Plan 48 - Oak Close Tiverton
Plan 49 - Old Park Tiverton
Plan 50 - Palmerston Park Woods
Tiverton
Plan 51 - Peoples Park Crediton
Plan 52 - Peoples Park Tiverton
Plan 53 - Phoenix House Tiverton
Plan 54 - Queen Elizabeth Drive
Crediton Plan 55 - Railway Walk
Tiverton
Plan 56 - River Exe Recreation Tiverton
Plan 57 - School Road Silverton
Plan 58 - Southfield Drive Crediton
Plan 59 - St Andrew Street Tiverton
Plan 60 - St Lawrence's Green Crediton
Plan 61 - Starkey Close Tiverton
Plan 62 - Stoneyford Cullompton
Plan 63 - Blank
Plan 64 - The Oval Tiverton
Plan 65 - Tidcombe Railway Walk Tiverton
Plan 66 - Tree Field Tiverton

Plan 67 - Victoria Close Willand
Plan 68 - Victoria Crescent Crediton
Plan 69 - West-Exe Recreation Ground
Tiverton
Plan 70 - Willand Moor Road Willand

5.3 **Enclosed Children's Play Areas**

Plan 71 - Amory Park, Tiverton
Plan 72 - Ash Drive Cullompton
Plan 73 - Ashley Rise Tiverton
Plan 74 - Banksia Close Tiverton
Plan 75 - Barnfield Crediton
Plan 76 - Barns Close Bradninch
Plan 77 - Bockland Close Cullompton
Plan 78 - Chaffinch Drive Crediton
Plan 79 - Churchlands Bow
Plan 80 - Coles Mead Tiverton
Plan 81 - Conifer Close Cullompton
Plan 82 - Cornlands Sampford Peverell
Plan 83 - Cotteylands _ Cameron Close Tiverton
Plan 84 - Cudmore Park Tiverton
Plan 85 - Culm Valley Way Uffculme
Plan 86 - Dove Close Cullompton
Plan 87 - Ellerhayes Hele
Plan 88 - Everett Place Tiverton
Plan 89 - Fernworthy Coplestone
Plan 90 - Fulda Crescent Crediton
Plan 91 - Glebelands Cheriton Bishop
Plan 92 - Godfreys Garden Bow
Plan 93 - Greenaway Morchard Bishop
Plan 94 - Greenway Crediton

Plan 95 - Halsbury Road Tiverton
Plan 96 - Harpitt Close Willand
Plan 97 - Hawthorne Road Tiverton
Plan 98 - Haymans Close Cullompton
Plan 99 - Haymans Green Cullompton
Plan 100 - Headweir Road Cullompton
Plan 101 - Knightwood Cullompton
Plan 102 - Lapford Play Area
Plan 103 - Larks Drive Cullompton
Plan 104 - Linden Road Cullompton
Plan 105 - Logan Way Hemyock
Plan 106 - Lords Meadow Crediton (1)
Plan 107 - Lords Meadow Crediton Skate Park Crediton
Plan 108 - Lords Meadow Crediton
Plan 109 - Mallow Court Willand
Plan 110 - Millhayes Hemyock
Plan 111 - New Buildings Sandford
Plan 112 - Orchard Leigh Tiverton
Plan 113 - Orchard Way Willand
Plan 114 - Palmerston Park Tiverton
Plan 115 - Pathfields Uffculme
Plan 116 - Pippins Field Uffculme
Plan 117 - Ploudal Road Cullompton
Plan 118 - Primrose Close Tiverton
Plan 119 - Priory Road Tiverton
Plan 120 - Puddington Play Area
Plan 121 - Queen Elizabeth Drive Crediton
Plan 122 - Queensway Tiverton
Plan 123 - Recreation Ground Willand
Plan 124 - Rivermead Cullompton
Plan 125 - Siskin Chase Cullompton

Plan 126 - South View Willand
Plan 127 – Spencer Drive Tiverton
Plan 128 - Spindlebury Road Cullompton
Plan 129 - Spinning Path Gardens Crediton
Plan 130 - St Martins Close Bow
Plan 131 - Starkey Close Tiverton
Plan 132 - Starlings Roost Cullompton
Plan 133 - Station Road, Bray Close Burlescombe
Plan 134 - Sunnymead Copplestone
Plan 135 - Tiverton Adventure Playground
Plan 136 - Town Barton Sanford
Plan 137 - Townlands Bradninch
Plan 138 - Trickey Close Tiverton
Plan 139 - Tuckers Meadow Crediton
Plan 140 - Tufty Park Cullompton
Plan 141 - Victoria Close Willand
Plan 142 - Walnut Drive Crediton
Plan 143 - Water Meadow Cullompton
Plan 144 - Waylands Road Tiverton
Plan 145 - West-Exe Recreation Ground & Pool
Tiverton
Plan 146 - Wilcombe Tiverton
Plan 147 - Worcester Crescent Willand
Plan 148 - Tanners Close Clover Drive Cullompton
Plan 149 - The Hams BMX Track Tiverton

6.0 HUMAN RIGHTS

6.1 In deciding whether to make a PSPO, the Act says councils must have particular regard to the rights of freedom of expression and freedom of assembly set out in Articles 10 and 11 of the European Convention on Human Rights. The need to “have particular regard” to Articles 10 and 11 suggests

that Parliament, in passing the Act, has sought to give these rights an elevated status in relation to deciding whether to make a PSPO.

- 6.2 PSPOs are a powerful remedy because they affect the behaviour of every person within a specified area rather than being targeted at individuals. For this reason the Council will need to take care to ensure that they balance the need to tackle anti-social behaviour, crime and disorder against the desire and entitlement of the public to use a public space.

Article 10: freedom of expression

1. *Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*

2. *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary*

Article 11: freedom of assembly and association

1. *Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*

2. *No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State*

- 6.3 It is considered that making the Revised Draft PSPO will not unnecessarily interfere with what would otherwise be legitimate and lawful activity.

7.0 CONCLUSION

- 7.1 The Revised Draft PSPO, if made, will introduce a range of reasonable and proportionate prohibitions and requirements on the use of publicly accessible land that would better control the harmful activities of irresponsible dog owners whilst enabling responsible dog owners to continue to exercise their dogs without undue restrictions.

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Circulation of the Report: Cllr Colin Slade, Cabinet, Leadership Team

Appendix B – Consultation responses Summary