

**SCRUTINY COMMITTEE  
15 FEBRUARY 2021**

**A REPORT TO THE SCRUTINY COMMITTEE ON THE PROCESSES USED FOR  
THE PUBLIC SPACES PROTECTION ORDER**

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

**Reason for Report:** This report sets out the processes used for the Public Spaces Protection Order (PSPO) to date.

**Recommendation: For Scrutiny Committee to note the contents of this report.**

**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, the absence of the PSPO or any means to issue FPN will have been some reduction in income.

**Budget and Policy Framework:** The Council had measures in place to control dogs under Dog Control Orders made under the Clean Neighbourhood and Environment Act 2005. These Dog Control Orders expired on the 19 October 2020. The proposed making of the PSPO is to ensure approved measures to control dogs.

**Legal Implications:** The PSPO is designed to curb anti-social behaviour arising from dog fouling and other matters which may be set out in the new draft order (if approved). Any order approved by the Council is for a period of no more than 3 years.

**Risk Assessment:** Until the PSPO is approved the Council will not be able to tackle anti-social behaviour arising from dogs which could therefore lead to a reputational as well as an environmental concern. We will also be at risk of not meeting statutory duties such as under S89 of the Environment Protection Act 1990 to ensure that land is clear of litter which includes dog waste.

**Equality Impact Assessment:** The equality issues are to be addressed within the draft order, which will set out certain exemptions. These cover those needing assistance dogs or those 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 is a frontline service which works throughout the District ensuring the 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 desirability of our open spaces.

## 1.0 Introduction/Background

1.1 Any PSPO must be proportionate and clear to enforce. A PSPO is an Order used throughout England and is often used in connection with dogs and ensures that members of the public can use and enjoy public spaces free from anti-social behaviour.

1.2 The Council had Dog Control Orders for Dog Fouling and Dogs on Leads which were issued in December 2012 under the Clean Neighbourhood and Environment Act 2005. These automatically became PSPOs under transitional provisions in the Anti-Social Behaviour Crime and Policing Act (ASBCPA) 2014 (Section 75), but these PSPOs also automatically expired on the 19th October 2020. MDDC Fouling Of Land By Dogs (Mid Devon) Order 2012 Policy and Procedure was issued in January 2016 and was due to be reviewed in September 2019.

1.3 It was brought to Legal Services attention by a Councillor that they were advised by a Parish Council by NALC and SLCC that the legislation under the ASBCPA 2014 expired on the 20 October 2017. This was reviewed and the legislation and additional statutory guidance is very clear, under Section 75 that where a Dog Control Order is still in force three years from commencement of the ASBCPA 2014 (S59-75 came into force on the 20 October 2014) i.e. 20 October 2017, the provisions of such an order will automatically be treated as if they were provisions of a PSPO. The transitioned Order will then remain in force up to a maximum of three years from the point of transition i.e. up to the 19 October 2020.

1.4 The Environmental Educational Enforcement Policy report was presented to the Environment PDG on the 14 January 2020, which referred to the PSPO. The Environment PDG agreed that the PSPO be deferred to the March meeting of the Environment PDG for Officers to prepare and present a revised covering report and plan that could be recommended to Cabinet for public consultation.

1.5 The Street Scene, Education & Enforcement Team undertook an internal review and requested support from Legal Services to produce a draft PSPO order (hereinafter referred to as the "Consultation Draft PSPO").

1.6 On the 10 March 2020 the Environment PDG recommended to Cabinet that authority be given to consult with members of the public and other relevant stakeholders to introduce a PSPO, with the fixed penalty for breach of the order to be set at the maximum level permitted of £100.

1.7 Cabinet on the 23 April 2020 resolved that the Consultation Draft PSPO should go out to consultation before a decision was made whether to approve the PSPO. The consultation responses would return to the PDG and the Cabinet for consideration.

1.8 The Consultation Draft PSPO went out for public consultation from 12 May 2020 to 17 July 2020.

1.9 As part of the consultation process the following were consulted:

- local parish councils
- town councils
- MP's
- Councillors
- local authorities
- community centres
- ramblers and walking groups
- animal welfare groups
- The Kennel Club
- Boarding Kennels
- Sports Clubs

The Consultation Draft PSPO was on the Council website, and notices were placed in all parks and areas the PSPO related to, along with a QR code to aid the public to be taken directly to the consultation page. The PSPO was on Facebook and in Council communications and it was also mentioned in Devon Live. The chief officer of the Police and the Police Crime Commissioner were also contacted as required. Owner/Occupiers of residences near to the proposed affected areas were contacted, in accordance with the consultation requirements in the ASBCPA 2014.

## 2.0 Consultation Results/Revised Draft

2.1 The consultation covered the controls in Public Spaces to be :

- Prohibit Dog Fouling in all open air areas
- Require Dogs to be on leads in named cemeteries, parks and also when requested by an authorised officer or police constable and
- Exclude dogs from the play areas listed
- Limit the number of dogs walked at a time by one person

### Dog Fouling

2.2 In relation to Question 1 – 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 in the Consultation Draft PSPO)? Response - 682 Yes (99.13%). The response was also very clear in Question 2 – 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? Response – 667 Yes (98.38%).

### Dogs on Leads

2.3 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. In a Freedom of Information (FOI) request it was reported as a total of 70 reports between 1 April 2019 and 31 March 2020. There was a discrepancy in numbers of 58 further occurrences. Although these additional reports had been made no details of the incident had been recorded. Due to no data on the reported

cases, Officers were unable to identify which type of incident had occurred which was why they were not added in the FOI numbers.

2.4 The responses to the questions regarding dogs on leads are shown below:

|     |  |        |            |
|-----|--|--------|------------|
| 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%     |

### Excluding dogs from children's play areas

2.5 The response was as below:

|    |  |        |            |
|----|--|--------|------------|
| 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%     |

### Limit on the number of dogs

2.6 The Council was 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 was 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.

The response to these questions were:

|    |  |        |            |
|----|--|--------|------------|
| 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%     |

## Additional questions

### 2.7

|    |   |        |            |
|----|---|--------|------------|
| 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%     |

2.8 After having reviewed the consultation responses it was decided to bring forward a Revised PSPO for consideration by Members, (hereinafter referred to as the “Revised Draft PSPO”).

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

- a) 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;
- b) 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
- c) “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
- d) 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
- e) 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.

2.10 The Revised PSPO did not include the following requirements which were in the Consultation Draft PSPO:-

- a) 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.
- b) 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
- c) No person in any Public Spaces shall be in charge of more than 4 dogs at any time.

### **3.0 Special Environment PDG on 19<sup>th</sup> October 2020**

3.1 A Special meeting of the Environment PDG was held on the 19 October 2020 so that the PSPO could then be considered at Cabinet on the 29 October 2020 and to minimise any period when a PSPO was not in force, as the current PSPO was due to expire on the 19 October 2020.

3.2 At this special meeting Officers explained that although the responses from the public and parish councils had been considered, any additional areas proposed could not be added at this point as these areas were not consulted on. Options were provided to the PDG. Firstly, that the PSPO could be sealed with the existing areas in place and new areas could then be added by way of a variation once a public consultation had taken place. Secondly, that a second PSPO could be added to include the additional areas once the public consultation had taken place or thirdly, that the PSPO was not sealed and deferred to allow for amendments to be made and for additional areas to be added once a public consultation had taken place on them, but that this would leave the Council without a PSPO for a period of time.

3.3 Members considered the views of the public and elected Members, along with the concerns raised regarding the dogs on leads in all public spaces and the number of dogs allowed. Members' views that not having a PSPO for a period of time would not have a detrimental effect on the Council was also noted and considered in making their decision.

3.4 It was the Environment PDG's recommendation that the third option be pursued, namely that the PSPO be redrafted to take account of the public consultation responses before it goes out for further public consultation on additional areas proposed and that the revised PSPO be brought back to Environment PDG for recommendation to the Cabinet.

#### **4.0 Cabinet meeting on 29 October 2020**

4.1 The recommendation of the Environment PDG was brought before Cabinet on the 29 October 2020. Further points were raised at Cabinet.

4.2 Cabinet discussed the PSPO at length and considered numerous issues such as whether Byelaws should be used or alternatively Community Protection Notices (CPN). It was explained why both of these were not recommended for use in dog control situations, but further information would be included in the future report. However and for example, one advantage of a PSPO is that if there is an offence either failing to comply with a requirement or prohibition then the offender is given a Fixed Penalty Notice (FPN), if the FPN is not paid then the offender would be prosecuted. On most occasions FPNs are paid.

4.3 It has been suggested that the consultation process was flawed, however apart from the issue regarding maps (see next paragraph), the rest of the process was correct, and the relevant parties were notified in accordance with legislation and statutory guidance. In fact the consultation carried out by Officers went beyond the statutory minimum requirements.

4.4 It was discussed that there were some errors within the maps provided (the areas on some maps did not cover the full area required or in some cases was not included or covered too large an area). Officers confirmed that areas that had been consulted on and not required could be removed, but new areas which had not been consulted on could not be added to the revised draft PSPO without having first consulted on them. There were options available regarding the PSPO, it could be made and later varied after having carried out any further necessary consultation on any new areas, or an additional PSPO order could be made to refer to the new areas only. The third option available was that the revised draft PSPO not be approved

and the Revised Draft PSPO be amended and then consulted on again (as necessary) to include the new areas, and this was the route that Cabinet decided on.

4.5 A point raised by a member of public in Public Question Time (PQT) was regarding the full set of responses not being accurate as his response was not included, however there is a document which contained all of the responses to the survey including the Alternative Proposals responses, the majority of which were comments. The document which contained all the responses was taken into account in the Revised Draft PSPO.

4.6 In relation to the number of dogs walked at any one time the consultation question asked if it was agreed that the limit should be set at 4 dogs maximum. It is noted that the consultation response agreeing that the maximum should be 4 dogs was 53.72%, but the comments for this question ranged from suggestions of 2 dogs max, to some saying that 4 was too many, and again numbers were dependant on the dogs size, to perhaps a limit of 6 to cover professional dog walkers. Cabinet considered raising the number of dogs which may be walked at any time from 4 to 6.

## **5.0 Current position and future process**

5.1 The Revised Draft PSPO was not approved by Cabinet, given the concerns regarding the maps, and other misgivings of Members and comments made in the public consultation. Cabinet wanted there to be more reflection of the issues raised.

5.2 The implications of not having a current PSPO means that District Officers cannot take action with regards to the dog controls mentioned in this report. This means that there is the potential for some loss of revenue, but it should also be taken into account that the District Officers do not solely cover dog offences, but also cover other areas such as parking, fly tipping etc.

5.3 Officers have taken into consideration that there must be areas where dog owners can exercise their dogs in public spaces, but there are areas where restrictions are required such as in cemeteries and in enclosed play areas. The PSPO that expired in October 2020 had replaced the Dog Control Orders and that was in accordance with legislation and statutory guidance. PSPOs are therefore designed to replace Dog Control Orders and cover any anti-social behaviour issues relating to dogs.

5.4 As maps were an area of concern with the PSPO the Officers have attempted to rectify this – these maps were initially provided using the GMS system which unfortunately Officers were later informed was not up to date. After the Cabinet meeting on the 29 October 2020 the revised maps were requested. Officers were informed that they would receive the outstanding maps (at the time of writing this report we have received the cemetery maps, but are awaiting the enclosed play areas) by the end of January 2021. Unfortunately Covid-19/limited resources/Christmas Closure of the office has created more work in some areas which has hindered the provision of maps. Although Officers have been waiting for the maps, this has not stopped some of the other work that is required to be completed in the interim e.g. the cemetery maps have been sent to the parish councils and are now ready for the public consultation. Whilst reviewing these maps further issues have arisen, some as a result of feedback from the Parishes or via the Officers considering unenclosed play areas and closed churchyards, these are now



in the process of being resolved. We do accept that resolving the issues with the maps has taken longer than anticipated.

5.5 Once the outstanding maps are received the Officers will send these maps to the parishes to consult on whether they cover the correct area and whether they want the area included or not. Also, they are being asked if there are any areas that the Council may have missed. Any areas included within the PSPO need to be evidenced that this is an area where behaviour has had, or is likely to have a detrimental effect on the local community. The Officers will ensure all areas to be included in the PSPO meet all of the legal requirements and explain this when the matter is returned to the Environment PDG.

5.6 Although this process has not yet been completed Officers acknowledge that there are lessons that can be learnt for the future. These lessons mainly relate to planning project management more carefully and allowing sufficient time. For example Officers are already discussing that if the PSPO is made that we will look towards the next 3 years, after a period of 18 months. Also utilising the resources such as parish and town council knowledge to ensure that the maps and areas are accurate and clearly defined and not just basing this on a mapping system.

5.7 Officers have prepared and are working to a project timeline and once the maps have been received a meeting will be arranged with a small group of Councillors to review the Second Revised Draft PSPO along with the maps; the meeting will cover justifications, rationale, evidence of complaints and the initial consultation responses. Once the Officers and Councillors have met, at the latest mid-February 2021, a report will be prepared and sent to the Environment PDG.

5.8 The Officers are aiming to send the Second Revised Draft PSPO report to a Special Meeting of the Environment PDG and then to go to Cabinet on the 13 May 2021. If Cabinet approves the Second Revised Draft PSPO then this would then be able to go out to public consultation (if necessary). The consultation process would cover all of the required consultees as per the first consultation process. The advantage this time is that the Officers already have the consultation responses from the first consultation, and have spoken at length with Councillors, along with the local parish and town councils. If required, this consultation period would be for a period of 4 weeks in May/June which would then mean that a further report taking into account the second consultation responses would be prepared and sent to Environment PDG and then to the following Cabinet with the aim of approving the Second Revised Draft PSPO.

## **6.0 Recommendation**

6.1 That the Scrutiny Committee note the contents of the report.

**Contact for more Information:** Maria de Leiburne Legal Services Team Leader (01884 234210 [mdeleiburne@middevon.gov.uk](mailto:mdeleiburne@middevon.gov.uk))

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

## **List of Background Papers:**

<https://democracy.middevon.gov.uk/documents/g1117/Printed%20minutes%2014th-Jan-2020%2017.30%20Environment%20Policy%20Development%20Group.pdf?T=1>

<http://mddcmgov01:9070/documents/g1118/Printed%20minutes%2010th-Mar-2020%2017.30%20Environment%20Policy%20Development%20Group.pdf?T=1>

<http://mddcmgov01:9070/documents/g1317/Printed%20minutes%2023rd-Apr-2020%2018.00%20Cabinet.pdf?T=1>

<http://mddcmgov01:9070/documents/g1376/Printed%20minutes%2019th-Oct-2020%2017.30%20Environment%20Policy%20Development%20Group.pdf?T=1>

<http://mddcmgov01:9070/documents/g1261/Public%20minutes%2029th-Oct-2020%2018.00%20Cabinet.pdf?T=11>