

**CABINET
30 NOVEMBER 2021**

PUBLIC SPACES PROTECTION ORDER - DOGS

Cabinet Member(s): Cllr Colin Slade, Cabinet Member for the Environment and Climate Change
Responsible Officer: Darren Beer, Operations Manager - Street Scene and Open Spaces

Reason for Report and Recommendations: To consider whether to make a proposed variation to the Mid Devon (Public Spaces Protection) (Dog Control) Order 2021 (the 'PSPO'), for which further consultation and consideration of responses will be required before the Order is made, to add two locations to the list of areas in the PSPO where dogs are only allowed, add one location to the list of areas in the PSPO where dogs are excluded; and correct a plan within the existing PSPO which shows the wrong area of land.

RECOMMENDATION FOR CABINET:

- 1. On being satisfied that the statutory grounds for varying the Mid Devon (Public Spaces Protection) (Dog Control) Order 2021 are met as detailed in the Report, commence public consultation on the proposed variation order (Appendix A) which will:**
 - (a) designate the Locations in Hemyock, as shown on the plans attached to this report at Appendix B and Appendix C, as areas where dogs are only allowed if on leads,**
 - (b) designate the Location in Kentisbeare, as shown on the plan attached to this report at Appendix D, as an area where dogs are excluded, and**
 - (c) amend Plan 82 of the PSPO to show the play area at Siskin Chase, Cullompton.**
- 2. In the event that there are no material objections to the variation order as determined by the Operations Manager for Street Scene and Open Spaces in consultation with the Cabinet Member for the Environment and Climate Change to grant delegated authority to the Operations Manager for Legal and Monitoring to make the Variation Order (subject to any minor variations as he/she considers appropriate).**
- 3. In the event that the above delegation is not exercised, the matter be reported back to Cabinet for consideration.**

Financial Implications: Whilst a consequence of enforcement may be an increase in Fixed Penalty Notices (FPN), income generation is not the reason for introducing a new PSPO. New signage has already been procured.

Budget and Policy Framework: Mid Devon District Council (the 'Council') has a PSPO already in place, which deals with anti-social behaviour caused by dog owners. The Locations to be designated as dogs on lead and dogs excluded are unlikely to significantly increase costs

Legal Implications: The PSPO is designed to curb anti-social behaviour arising from dog fouling and other matters which is set out in the PSPO. The PSPO is in force for a period of no more than 3 years from 7 October 2021. Any variation of the PSPO must be carried out in accordance with the statutory requirements in the Anti-social Behaviour, Crime and Policing Act 2014.

Risk Assessment: The Locations that have been identified by Hemyock Parish Council and Kentisbeare Parish Council are areas which currently have dog-related anti-social behaviour, failure to add these areas will have a negative impact on the individuals within the parish. Not amending Plan 82 to show the correct area at Siskin Chase, Cullompton would prevent the Council from enforcing the provisions of the PSPO in relation to that area.

Equality Impact Assessment: An Equality impact assessment is not needed at this stage as the issue to be considered is only whether the proposed variation goes out to consultation.

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: A PSPO requires or prohibits 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. Further, reduced levels of dog related anti-social behaviour improve the desirability of our open spaces.

1.0 INTRODUCTION/BACKGROUND

1.1 Clause 6.2 of the PSPO provides that dogs must be on leads in those public parks which are listed in Schedule C to the PSPO. Clause 70 of the PSPO provides that dogs should be excluded from the enclosed play areas listed in Schedule D to the PSPO.

1.2 Both Hemyock and Kentisbeare Parish Councils asked, prior to the making of the PSPO, that the locations be included in the PSPO as areas where dogs must be on leads and excluded, respectively. Unfortunately the requests were overlooked when the draft of the PSPO went out for statutory consultation. It was discovered after the consultation that the Locations had been missed. It was felt that it would be wrong to include the Locations in the PSPO when they had not been consulted on as the Council could be legally challenged for

not following due process. This report gives consideration as to whether the PSPO should be varied to include the Locations.

- 1.3 A PSPO may be varied by applying to a new area of public space to which it previously did not apply only if certain conditions are met as regards activities in that new area.
- 1.4 The first condition is that—
 - (a) activities carried on in the new 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 the new area and that they will have such an effect.
- 1.5 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 notice.
- 1.6 If the Council wishes to vary the PSPO by including the Locations in the dogs on lead areas and the dogs excluded areas then it will have to be satisfied that the above conditions are met before making such a variation order.
- 1.7 Between 1 April 2019 and 31 March 2020 the Council received 70 correctly completed reports of antisocial behaviour relating to dogs:
 - 51 dog fouling reports
 - 18 dog on dog/person reports
 - 1 nuisance behaviour report
- 1.8 Responsible dog ownership enforcement via the PSPO aids the reduction of risk to the general public of diseases such as toxocariasis from dog faeces; freedom from potential animal attacks and safeguarding the public and wildlife via the 'dogs on a lead' element.
- 1.9 Any requirements or prohibitions that are to be imposed must be both reasonable to impose and aimed at preventing or reducing the risk of the detrimental effect from continuing, occurring or recurring.
- 1.10 In relation to changing Plan 82 to show the correct area in Siskin Chase, Cullompton, it is submitted that the conditions had been considered met when the Cabinet authorised the making of the PSPO in August 2021. Amending the Plan to show the correct area is to ensure that the Council can properly enforce the PSPO in that area.
- 1.11 One of the advantages to having a PSPO in place is that if there is an offence of failing to comply with a requirement or prohibition then the offender may be given a FPN; if the FPN is not paid then the offender may be prosecuted.
- 1.12 It should be noted at present the number of public park areas in the District subject to the requirement of dogs on leads in the PSPO is only 14. It should also be noted however that dogs are excluded by the PSPO from a number of children's play areas in the District.

- 1.13 There are many localities available in the District for dogs to be exercised freely. These areas do not exclude dogs and do not require dogs to be on leads unless requested by an authorised officer or a police constable where reasonably necessary to prevent a nuisance or behaviour by the dog likely to cause alarm, distress or disturbance to any other person or animal or bird on the land.
- 1.14 The problem the variation order seeks to address is that of dogs, not under the control of their owners, interfering with members of the public using the Locations. It is a fact of life that a small minority of dog owners do not have control of their dogs when off the lead causing problems to other members of the public. Small children when running and playing freely are at risk from such dogs.
- 1.15 The Council has to strike a balance when considering which areas should be subject to the restriction of dogs on leads. The balance is between ensuring there are areas available where dogs can run off their lead and areas where dogs must be on a lead thereby ensuring members of the public can use the open space without interference from dogs.
- 1.16 In relation to dogs being excluded, the Council has to balance the similar risks in relation to dogs on leads and allowing the public to enjoy the open space and in addition, the risk to health of the public, especially children, in enclosed play areas from disease as a result of irresponsible dog fouling.
- 1.17 It is considered that including the two Hemyock Locations as part of the areas subject to the PSPO restriction of dogs on leads is acceptable given the reasons below and considering that there are other acceptable areas available where dogs can exercised off lead.
- 1.18 Both Hemyock Locations have unenclosed playing pitches, and Longmead has an unenclosed BMX track and some football goal posts. It is considered that some dogs if they are off lead will not be under sufficient control of their owners and could interfere with users of the playing pitches and BMX track.

Hemyock Parish Council have reported that they have erected signs in both Locations requesting that dogs should be kept off the playing pitches but these signs are being ignored and there is a problem of dog mess being left on the pitches. It is considered that this is unacceptable and supports the need for a variation to the PSPO to include the Locations.

- 1.19 It is considered that including the Kentisbeare enclosed play area as part of the areas subject to the PSPO restriction of excluding dogs is also acceptable given the reasons below and considering that there are other acceptable areas available where dogs can exercised off lead.
- 1.20 The Kentisbeare play area is enclosed with play equipment, a concrete baseball pad and a football goal to one side. Further, Kentisbeare Parish Council have applied for planning permission to include a cycle track within the enclosed area. It is considered that users of the play area, including

children, are exposed to toxocariasis from dog faeces left in the area and from dogs that are not kept under control in the area.

- 1.21 At the Environment PDG on 2 November 2021 the PDG was appraised of the Hemyock Locations that had been overlooked. However, the omitted Kentisbeare play area and the incorrect Plan 82 have only come to light after that meeting.
- 1.22 As the recommendation from the Environment PDG was to authorise a consultation on the variation of the PSPO and there was insufficient time to call a special PDG meeting it was felt that all 3 variations should be put to Cabinet, and if agreed, should go out to consultation at the same time. This will reduce the cost of having to hold a separate public consultation in the future and prevent further delay in enforcing the PSPO in the Locations and the enclosed play area at Siskin Chase, Cullompton.
- 1.23 All Environment PDG members have been informed of the additional issues and sent a draft copy of this report and the appendices. They have been reminded of the opportunity to attend Cabinet.

2.0 CONSULTATION

- 2.1 The variation of the PSPO will require a consultation, and it is proposed that the following will be consulted:
 - Hemyock Parish Council
 - Kentisbeare Parish Council
 - Chief Constable of Devon & Cornwall Police
 - The Police & Crime Commissioner
 - Animal Welfare Groups
 - The Kennel Club
 - All Councillors
 - Members of the public
 - Devon County Council
 - The Owners and occupiers of the Locations.
- 2.2 The consultation, which will be open for four weeks, will state the opening and closing dates of when consultees could respond to the consultee, via:
 - Letter
 - Mid Devon District Council's website
 - Email

For those who cannot access the internet, other options will be advertised, such as the option to send a letter. Officers will also undertake direct consultation in the Locations during the consultation period to ensure views from users were captured by providing a QR code to enable direct access to the consultation page on the Council website and a phone number for the customer services call centre. A hard copy of the existing PSPO with the draft variation order and plans will also be available at the front desk of Phoenix House which could be viewed by appointment.

- 2.3 The purpose of the consultation is to seek views on the Council's intention to implement a variation of the PSPO in relation to dog controls within the Hemyock and Kentisbeare areas at the three Locations and to amend Plan 82.
- 2.4 The variation of the PSPO is centred on improving and protecting the local area for people residing, working, trading and visiting the Locations. The Council values public opinion on 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.

3.0 HUMAN RIGHTS

- 3.1 In deciding whether to make a variation to the PSPO, the Anti-social Behaviour, Crime and Policing Act 2014 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.
- 3.2 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*

3.3 Officers submit that making the variation to the PSPO will not unnecessarily interfere with what would otherwise be legitimate and lawful activity and that the varied PSPO does balance the need to tackle anti-social behaviour associated with dogs against the desire and entitlement of the public to use a public space.

4.0 CONCLUSION

4.1 If the variation to the PSPO is made, it will introduce a range of reasonable and proportionate prohibitions and requirements on the use of the publicly accessible land in the Locations that would better control the activities of irresponsible dog owners whilst enabling responsible dog owners to continue to exercise their dogs without undue restrictions.

4.2 Further, it would allow the Council to properly enforce the PSPO in the enclosed play area at Siskin Chase, Cullompton.

Contact for more Information: Darren Beer, Operations Manager – Street Scene and Open Spaces (01884 244635; dbeer@middevon.gov.uk)

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

Appendix A – The draft Mid Devon (Public Spaces Protection) (Dog Control) Order 2021 (Variation 1)

Appendix B – Plan of Open space at Millhayes, Hemyock

Appendix C – Plan of Recreation Ground Longmead, Hemyock

Appendix D – Plan of the Enclosed Play Area at Kentisbeare

Appendix E – Plan of the Enclosed Play Area at Siskin Chase, Cullompton

List of relevant documents:

Anti-social Behaviour, Crime and Policing Act 2014

<https://www.legislation.gov.uk/ukpga/2014/12/contents/enacted>

Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014

<https://www.legislation.gov.uk/uksi/2014/2591/contents/made>

NHS information on Toxocariasis

<https://www.nhs.uk/conditions/toxocariasis/>

Keep Britain Tidy information on Dog Fouling Issues

https://www.keepbritaintidy.org/sites/default/files/resource/Keep%20Britain%20Tidy%20Policy%20Position_Dog%20Fouling.pdf

Local Government Association - Public Spaces Protection Orders – Guidance for Councils

https://www.local.gov.uk/sites/default/files/documents/10.21%20PSPO%20guidance_06_1.pdf

DEFRA Dealing with irresponsible dog ownership Practitioner's manual (Oct 2014)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/373429/dog-ownership-practitioners-manual-201411.pdf