

For publication

Public Space Protection Orders

Meeting: Overview & Performance Scrutiny Forum

Date: 10 January 2017

Report by: Health & Wellbeing Manager

1.0 Purpose of report

1.1 To update the Overview and Performance Scrutiny Forum on progress on the development of a new Public Space Protection Order (PSPO) to provide for enhanced dog control.

1.2 To outline options for updating the existing Designated Public Place Order (DPPO) to extend controls on street drinking and related anti-social behaviour.

2.0 Recommendations

2.1 The Overview and Performance Scrutiny Forum is recommended to note the progress made in respect of dog controls under a new PSPO and the results of the public consultation.

2.2 The Overview and Performance Scrutiny Forum is recommended to note the next steps in respect of dog controls under a new PSPO as outlined in section 3.20 below.

2.3 The Overview and Performance Scrutiny Forum is recommended to note the early discussions on possible changes to the street drinking controls as outlined in section 3.21 and the proposed next steps outlined in section 3.22.

3.0 Report details

Legislative Background

- 3.1 The Public Space Protection Order (PSPO) is a new power under the Anti-Social Behaviour, Crime and Policing Act 2014 and came into force in October 2014.
- 3.2 PSPO's are intended to deal with a particular nuisance or problem in a particular geographical area that is detrimental to the local communities quality of life, by imposing conditions on the use of that area which apply to everyone. They are designed to ensure law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.
- 3.3 A PSPO can be made by the local authority if they are satisfied on reasonable grounds that the activities carried out or likely to be carried out, in a public place:
 - Have had, or is likely to have a detrimental effect on the quality of life of those in the locality.
 - Is, or likely to be of a persistent or continuing in nature.
 - Is, or is likely to be unreasonable.
 - Justifies the restrictions imposed.
- 3.4 Local Authorities can make a PSPO on any public space within its own area. The definition of public space is wide and includes any place to which the public or any section of the public has access. A PSPO can contain both restrictions and requirements which will be determined by the Council after consultation with key stakeholders. These can be targeted against particular behaviours, by particular groups at specific times with more than one restriction being included within the PSPO. This means the Order can deal with a wider range of behaviours than the orders and by-laws it replaces.
- 3.5 Breaching a PSPO is a criminal offence and enforcement officers can issue Fixed Penalty Notices if appropriate to do so or create a prosecution file.
- 3.6 The PSPO can be in place for a maximum of three years and are designed to be flexible and responsive to need. There is no limit on the number of times that Orders can be renewed, as long as

the need is still present. Variation of a PSPO can be done at any time to respond to the changing needs of public spaces.

Background – dog control

- 3.7 In June 2012 the Council received a petition with over 800 signatures seeking dogs on leads in the borough parks and footpaths. The petition was considered at an Overview and Performance Scrutiny meeting on 9th October 2012. It was recognised that restricting the ability to exercise a dog off lead, particularly at larger parks was contrary to the Animal Welfare Act and the spirit of providing public open spaces for all to enjoy. But it was also accepted that some dogs are not kept under control and cause worry to other people, including other dog walkers.
- 3.8 There is a range of civil and legal remedies to control dogs in public areas including the Dogs Act 1871 and the Dangerous Dogs Act 1991 (enforced by the Police for 'dangerous dogs' and 'banned breeds'). Housing Services can also control dogs within and around their properties through enforcing the tenancy agreement.
- 3.9 Under the Clean Neighbourhoods and Environment Act 2005, the Council adopted several Dog Control Orders (DCO's), these are: -
- ✓ DC01 – dog fouling is not permitted in cemeteries (Boythorpe, Brimington, Spital and Staveley).
 - ✓ DC02 – dogs must be kept in a lead at cemeteries (Boythorpe, Brimington, Spital and Staveley).
 - ✓ DC03 - requiring the removal of faeces on all public open spaces.
 - ✓ DC04 – dog exclusion zone at Eastwood Park, Hasland (specified on a map)
 - ✓ DC05 – dogs must be on a lead at Eastwood Park, Hasland (specified on a map).
 - ✓ DC06 – dogs on leads by direction at Eastwood Park, Hasland (when requested by an authorised officer).
- 3.10 As part of the review of the anticipated extent and controls of the new PSPO for dog control analysis of the number of complaints were reviewed and the following summarises the current data.

Table showing number of complaints per year for dog fouling and nuisance dogs

| Year (April to March) | Number of dog fouling complaints | Number of complaints about dogs (off lead, causing alarm or distress) |
|------------------------------|---|--|
| 2013 - 2014 | 308 | 43 |
| 2014 - 2015 | 332 | 50 |
| 2015 - 2016 | 357 | 35 |

3.11 The table above shows the information collated by Environmental Health only. The Housing Rangers and Park Rangers also receive complaints about dog fouling and nuisance dogs on housing/park land; however, they do not have any systems to record the specific details and/or numbers of complaints. Complaints have also been made to the parks team regarding nuisance dogs at nature reserves within the Borough and from the angling teams using the lakes at Holmebrook Valley Park and Poolsbrook Country Park.

Dog Control Consultation Outcome

3.12 The following outlines the responses to the public consultation carried out between Monday 26th September and Friday 4th November 2016.

3.13 Question 1 - The Council has existing powers which makes it an offence if a person in charge of a dog fails to clean up its faeces. Do you think we should continue to enforce this? (Making it an offence if a person in charge of a dog fails to clean up its faeces.)

Yes – 307

No – 1

Don't know – 0

Recommendation: The PSPO will require all owners to pick up after their dogs; therefore, it will be an offence if a person in charge of a dog fails to clean up its faeces.

3.14 Question 2 – At Boythorpe Cemetery, Brimington Cemetery, Spital Cemetery, Staveley Cemetery and within the Crematorium grounds it is a requirement for dogs to be under control and on a lead. Do you think we should continue to enforce this?

Yes – 297

No – 10

Don't know – 2

Recommendation: The PSPO will require all dogs to be on a lead at Boythorpe Cemetery, Brimington Cemetery, Spital Cemetery and Staveley Cemetery and within the Crematorium grounds.

- 3.15 Question 3 - In relation to Eastwood Park (Hasland) it is an offence to allow dogs in the play area. Dogs must also be kept on leads at all times around the lodge, wildlife garden and tennis courts area, and dogs must be put on a lead in the remainder of the park if asked to do so by an authorised officer. Do you think we should continue to enforce these requirements?

Yes – 274

No – 23

Don't know – 11

Recommendation: The PSPO will require all dogs to be kept on leads at all times around the lodge, wildlife garden and tennis courts area and in other areas of the park, dogs must be put on a lead if asked to do so by an authorised officer. The PSPO will also exclude dogs from the play area at Eastwood Park.

- 3.16 Question 4 - Do you think we should introduce a new offence under the PSPO requiring dog walkers to carry a 'poop bag' or other means for picking up after their dog?

Yes – 267

No – 35

Don't know – 7

The results have identified the need for following further considerations. The Council does not have powers to 'stop and search' residents (only the Police have this power). Therefore, we wouldn't be permitted to stop dog walkers and ask if they have the 'means to pick up'; we would only be able to ask if another dog related offence had been committed (i.e. dog has fouled and owner failed to pick up). The Kennel Club (statutory consultee) have provided a detailed response and supports proactive efforts that local authorities implement to encourage responsible dog ownership, the requirement to be in possession of means to pick up has to be fair and proportionate and that responsible dog owners would be penalised unfairly. They also raise the point that responsible dog owners, who know their pet well, might only carry one bag, use it and then bin it but then not have a bag upon their person. The Kennel Club also highlight that Cornwall Council

included this question in their consultation and subsequently decided against it as they deemed it to be 'disproportionate and concluded that the requirement would be toothless'. So someone might carry a bag but have no intention in using it.

3.17 Question 5 - Do you think we should introduce a new offence under the PSPO prohibiting dogs in children's play areas?

Yes – 238 No – 35 Don't know – 23

When asked which play areas, 146 respondents chose to comment, the results are as follows:

| Typical areas given | Number of comments |
|-------------------------|--------------------|
| All play areas | 53 |
| All fenced in areas | 10 |
| Holmebrook Valley Park | 14 |
| Queens Park | 4 |
| Inkerman Park | 6 |
| Eastwood Park | 9 |
| Poolsbrook Country Park | 2 |
| Somersall Park | 3 |
| Stand Road Park | 4 |

There needs to be further consideration of the next steps. There are 80 play areas within the Borough. If dogs were prohibited from every play area (fenced or unfenced) there would have to be a significant number of signs erected at every entry to that park/play area and maintained. The number of enforcement patrols would also increase. There has to be a balance for families that use the play areas and also bring their dogs with them. We would also have to provide dog hook up points, so dogs can be secured whilst the family use the play area. There is also the need to consider football pitches too.

3.18 Question 6 – Do you think we should introduce a new offence under the PSPO requiring dogs to be kept on a lead in additional designated area?

Yes – 172 No – 70 Don't know - 58

When asked which areas, 97 respondents chose to comment, the results are as follows:

| Typical areas given | Number of comments |
|---------------------------------------|--------------------|
| All play areas | 45 |
| Areas near wildlife / nature reserves | 5 |
| Outdoor sports pitches | 4 |
| Holmebrook Valley Park | 3 |
| Eastwood Park | 2 |
| Poolsbrook Country Park | 2 |
| Somersall Park | 2 |
| Graveyards and cemeteries | 2 |
| Shentall gardens | 2 |
| Town centre | 2 |
| Stand Road Park | 1 |
| Other areas / comments | 27 |

There needs to be further consideration of the next steps. Signage needs to be erected in prominent locations to inform residents and visitors to the town the requirements of the PSPO, particularly if there are designated areas requiring dogs to be on leads. The more designated areas, the more signage required and this adds to the overall cost of implementation. The Kennel Club don't normally oppose designated areas for dogs to be on leads provided the local authority makes alternative provisions for dog walking and exercising dogs off lead.

The Kennel Club support reasonable "dogs on leads" when proportionate such as picnic areas, cemeteries or sites where livestock and sensitive wildlife may be present, or on pavements in proximity to cars and other road traffic.

The Kennel Club will oppose PSPOs which introduce blanket restrictions on dog walkers accessing public open spaces without specific and reasonable justification.

3.19 Question 7 – Do you have any other comments or suggestions?

When asked, 133 respondents chose to comment, the results are as follows:

| Typical areas given | Number of |
|---------------------|-----------|
|---------------------|-----------|

| | comments |
|---|----------|
| Questioning enforcement / visibility of enforcement | 36 |
| In favour of designated dog exercise areas | 20 |
| General comments in support of proposals | 19 |
| In favour of dogs being kept on leads | 8 |
| Practicalities regarding poo bags and bins | 7 |
| Safety concerns | 5 |
| Concerns about criminalising dogs/owners | 2 |
| Regarding signage | 2 |
| Other comments | 34 |

There needs to be further consideration of the next steps. Enforcement at different locations, particularly out of hours (evenings and weekends). Signage needs to be visible and draw the attention of the public. The Kennel Club has made specific recommendations "you are now entering a dog exclusion zone" and "you are now leaving a dog exclusion zone". Provision of more dog litter bins and/or dog poo bag dispenser at some/all parks.

Next steps

3.20 The following are the proposed next steps in respect of dog control

- Publish the results on the website
- Agree the content of the PSPO in relation to dog control
- Cabinet to agree/sign off the proposals
- Update staff
- Confirm enforcement roles
- Design signage
- Remove old signs
- Erect new signs
- Advertise on social media/press/website, inform residents/tenants/visitors to the area
- Monitor/enforcement patrols

Background – DPPO and Wider Anti-Social Behaviour

- 3.21 A recent meeting of key stakeholders and partners has taken place to consider whether the existing DPPO should be allowed to 'transition' directly into a PSPO or whether changes are required to enhance the controls on street drinking. As part of the discussion there were also a number of other issues identified relating to anti-social behaviour particularly in Chesterfield Town Centre and these included urinating and defaecating in a public place, aggressive begging and some public realm issues such as fly posting and graffiti.
- 3.22 Following the workshop it has been agreed to review the outcomes and establish a further meeting to examine options for enhanced controls through a new PSPO. This is currently at an early stage and would need to be fully developed before formal consultation commenced.

4 Human resources/people management implications

- 4.1 Breaching a PSPO is a criminal offence and enforcement officers can issue Fixed Penalty Notices. It would be advisable to put in place a review across the whole Council as to which staff has enforcement powers. Some staff may need refresher training.

5 Financial implications

- 5.1 There is a financial implication in that the control zones will need to be signed to allow enforcement. The more restrictions and requirements in place, the more signage that needs to be displayed; for example if restrictions were imposed at a public park, every entrance to that park would need to have appropriate signage clearly displaying what is required of visitors to that park.

6 Legal and data protection implications

- 6.1 The implementation of the PSPO can be challenged by any 'interested person' within 6 weeks of the making of the Order; the challenge is made at the High Court. Anyone who is directly affected by the making of the PSPO can challenge the order. A challenge can be made on the basis that the Council does not have the power to make the Order, or that the particular prohibitions or

requirements are unnecessary or that procedurally the order is defective.

7 Consultation

7.1 Under the Anti-Social Behaviour Crime & Policing Act 2014, Chesterfield Borough Council has the option of keeping the existing DCO's as they are (i.e. listed above in the table above) and including them in the new PSPO and to introduce some new requirements to deal with dog fouling and problematic behaviour.

7.2 Between Monday 26th September and Friday 4th November a consultation document was made available to the following stakeholders:

- Kennel Club (statutory consultee)
- RSPCA
- CBC employees
- CBC councillors
- DCC councillors
- Staveley Town Council
- Brimington Parish Council
- Derbyshire Police
- Friends of the Parks (several groups)
- Groups that use the parks (e.g. football, angling, running)

7.3 The consultation document was made available via the council's website and was advertised on social media. Paper copies were available at local libraries, veterinary surgeries and on the reception desks at the customer contact centre and town hall.

8 Recommendations

8.1 The Overview and Performance Scrutiny Forum is recommended to note the progress made in respect of dog controls under a new PSPO and the results of the public consultation.

8.2 The Overview and Performance Scrutiny Forum is recommended to note the next steps in respect of dog controls under a new PSPO as outlined in section 3.20 below.

8.3 The Overview and Performance Scrutiny Forum is recommended to note the early discussions on possible changes to the street

drinking controls as outlined in section 3.21 and the proposed next steps outlined in section 3.22.