



Report for:	Strategic Planning & Environment Overview & Scrutiny
Date of meeting:	20th November 2018
Part:	1
If Part II, reason:	

Title of report:	Public Space Protection Orders – Dogs
Contact:	Councillor Neil Harden Portfolio Holder for Community and Regulatory Services Author/Responsible Officer: Dawn Rhoden – Team Leader Operations & Public Health David Austin – Assistant Director (Neighbourhood Delivery)
Purpose of report:	To propose the introduction of a Public Space Protection Order to provide a means of controlling a number of dog activities having a detrimental effect on the quality of life for those living in, working in and visiting the area of Dacorum Borough Council
Recommendations	The committee note the results of the consultation and that any comments are passed to the portfolio holder prior to cabinet
Corporate Objectives:	Safe and Clean Environment <ul style="list-style-type: none"> • Maintain a clean and safe environment
Implications:	<u>Financial</u> The local authority must arrange for the display of signage advising of the effect of the Order. There is no prescribed format nor size requirements for these signs, and costs will ultimately depend upon the number of signs required and the design/materials used. There will be ongoing maintenance costs to replace any damaged signage.

<p>'Value For Money Implications'</p>	<p>There may be additional income from fixed penalty notices, which could partially defray the costs of enforcing the Order. No data is held that would allow an estimate for the likely income, as much would depend on the availability of resources to carry out enforcement activities.</p> <p>It is proposed that enforcement of the PSPO will be carried out within existing resources.</p> <p><u>Value for Money</u> PSPO's are seen as a more cost-effective means of controlling the activities in question than under byelaws, also providing a wider range of enforcement options.</p>
<p>Risk Implications</p>	<p>There will be risks associated with Council enforcement officers who will be tasked with enforcing the PSPO and appropriate training will need to be given. Individual risk assessments will be completed for the enforcement activity and all reasonable precautions taken to minimise any risk.</p> <p>There are also reputational risks in terms of the council being perceived as enforcing against vulnerable persons and seeking to criminalise certain behaviours which wouldn't normally attract fixed penalty notices or prosecution for non-payment.</p> <p>There are also limited resources for enforcement and therefore enforcement will have to be targeted at certain periods. The PSPO will raise expectations that prohibited behaviours will be eliminated entirely; however due to difficulties in identifying some of the contraventions and taking a proportionate approach to enforcement there will not always be immediate results which will be noticeable to the public.</p>
<p>Health And Safety Implications</p>	<p>Some H&S implications may arise from the enforcement of orders, and will be incorporated within individual service risk assessments for authorised enforcing officers.</p>
<p>Background papers:</p>	<p>Home Office – Reform of anti-social behaviour powers: Statutory guidance for frontline professionals (section 2.6)</p> <p>Home Office - Anti-social behaviour powers Statutory guidance for frontline professionals Updated December 2017</p> <p>Cabinet Minutes 24th April 2018. Proposal for consultation to commence.</p>

	<p>PSPO Consultation questionnaire analysis (numerical analysis of response to questions) – Appendix A</p> <p>Consultation analysis (written comments) – Appendix B, C, D, E, F, G & H</p> <p>Kennel Club official response to consultation – Appendix I</p> <p>Consultation Paper – Appendix J</p>
Glossary of acronyms and any other abbreviations used in this report:	<p>PSPO – Public Spaces Protection Order</p> <p>FPNs – Fixed Penalty Notices</p>

1. Background

1.1. Under the Anti-social Behaviour, Crime and Policing Act 2014, local authorities may make orders to prohibit specified activities, and/or require specified activities to be carried on in accordance with certain requirements, within a designated area in the public domain, which may include public highways and footways, parks and open spaces, pedestrianised areas, or similar. Such orders are known as Public Spaces Protection Orders (PSPO).

1.2. PSPO's can be used by authorities to control a variety of problematic behaviours which satisfy two statutory conditions:

“The first condition is that—

(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.

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.”

1.3. Prohibitions or requirements on activities covered by a PSPO must be reasonable in order to:

(a) prevent the detrimental effect from continuing, occurring or recurring, or

(b) reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.

1.4. Where a PSPO is in force, it is a criminal offence to do anything which is prohibited under the Order, or to fail to comply with requirements of the Order. Persons guilty of such offences are liable, on summary conviction, to a fine not exceeding level 3 on the standard scale (currently up to £1,000). Offences may also be disposed of by way of a fixed penalty notice of up to £100, payable to the local authority.

1.5. PSPOs may be enforced by a police officer, PCSO, or a person authorised by the local authority for that purpose.

1.6. A PSPO will be valid for a period of up to 3 years, at the end of which it may be extended. Orders may also be varied or discharged by the local authority at any time during their validity.

1.7. Prior to making, extending, varying or discharging a PSPO, a local authority must:

- Consult the chief officer of police and the Policing and Crime Commissioner for the applicable area; any community representatives that it is thought appropriate to consult; and the owners/occupiers of land included within the restricted area;
- Publish the draft Order (or details of variation/discharge proposal);
- Notify any parish/town councils within the restricted area, and the County Council;

with regards to its proposals. The authority must also consider its proposed restrictions against the rights of freedom of expression (Article 10) and assembly (Article 11) under the European Convention on Human Rights. The proposed restrictions have been considered against the rights in Article 10 and 11 but it is not considered that there will be any infringement on these rights. If there is any infringement it is considered that it is proportionate for the prevention of disorder and crime.

1.8. PSPO's may apply to all persons or only to persons in/not in specified categories; at all times or only within/not in specified times; and in all circumstances or only in/not in specified circumstances.

1.9. The power to make PSPO's replaced and consolidated several earlier area-control orders, including designated public place orders which have previously been used by the Council in respect of street drinking

1.10. PSPO's may be challenged in the High Court by any person who lives in, regularly works in or regularly visits a restricted area, within 6 weeks of an Order being made or varied.

2. Proposal for new PSPO's

2.1. A variety of dog related educational programs have taken place across the Borough, these events include:

- targeted fouling events in Chaulden and surrounding areas
- dog fouling educational patrols across the Borough
- attending community meetings
- involving local schools
- letter drops
- joint events with the PDSA and other local charities to promote responsible dog ownership.

Despite all of these events concerns still exist around a number of dog related activities currently occurring across Dacorum, these activities are considered detrimental to the quality of life for persons living in and using Dacorum.

2.2. It is therefore proposed to introduce PSPO's covering the whole of Dacorum

The public consultation considered the following Orders:

- (i) A person in charge of a dog in any public place within the Borough of Dacorum (excluding National Trust land shown in schedule 3) must forthwith clear up and remove any faeces deposited by the dog and either take away the faeces or place the faeces in a general litter or dog waste bin;
- (ii) A person in charge of a dog in any public place within the Borough of Dacorum must comply with any request from a Constable or a person duly authorised by the Council to clear up and/or remove any faeces deposited by the dog where they have otherwise failed to do so. The faeces must either be taken away or placed in a general litter or dog waste bin;
- (iii) A person in charge of a dog in any public place within the Borough of Dacorum must have with them an appropriate means to pick up dog faeces deposited by that dog. The obligation is complied with if, after a request from an authorised officer, the person in charge of the dog produces an appropriate means to pick up dog faeces.
- (iv) A person in charge of a dog on any public place within the Borough of Dacorum must comply with a direction given to them by a Constable or a person duly authorised by the Council to put and keep the dog on a lead (no more than 2m fixed length) unless:
 - (a) they have reasonable excuse for failing to do so, or
 - (b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so.Failing to comply with such a direction is an offence.
- (v) A person in charge of a dog in a public space within the borough of Dacorum Borough Council is prohibited from allowing the dog to enter the "Dog Exclusion Zones" these include fenced children's play areas, adventure playgrounds and splash parks defined in Schedule 1 hereto;

3. Consultation

Following Cabinet's recommendation in April 2018 a public consultation was initiated which invited comments from residents and interest groups on the proposals for the PSPO. There were over 1220 responses to the consultation and a summary of the responses provided under each proposal is set out below.

Members will also find annexed to this report a consultation questionnaire analysis, which is a numerical analysis of responses to questions (see Appendix A), a consultation analysis which analyses responses provided in the written "additional comments" section of each question (see Appendix B to F), and a written response from the Kennel Club (see Appendix I).

3.1. Aside from ensuring that the statutory tests, particularly in respect of proportionality and justifiability, are satisfied, there are a number of considerations around the introduction of PSPO's which would also need to be considered and are highlighted further below.

4. Clearing & Removing Faeces

Proposed Order One

A person in charge of a dog in any public place within the Borough of Dacorum (excluding National Trust land shown in schedule 3) must forthwith clear up and remove any faeces deposited by the dog and either take away the faeces or place the faeces in a general litter or dog waste bin;

Proposed Order Two

A person in charge of a dog in any public place within the Borough of Dacorum must comply with any request from a Constable or a person duly authorised by the Council to clear up and/or remove any faeces deposited by the dog where they have otherwise failed to do so. The faeces must either be taken away or placed in a general litter or dog waste bin;

Proposed Order Three

A person in charge of a dog in any public place within the Borough of Dacorum must have with them an appropriate means to pick up dog faeces deposited by that dog. The obligation is complied with if, after a request from an authorised officer, the person in charge of the dog produces an appropriate means to pick up dog faeces.
Note: Order one, two

4.1. **Question 1:** Do you agree or disagree with the proposed requirement that faeces deposited by a dog must be removed and either taken away or placed in a general litter or dog waste bin within the areas shown on the map in Schedule 3 (Please note this excludes National Trust land).

The consultation highlighted that 95.2% of respondents supported this proposal

There were 44 written comments in response to this proposal, these were mainly focused on the need for more bins and for a 'stick and flick' approach to be taken when

walking in more rural/wooded areas, which is the approach the National Trust use on their land.

Full comments can be seen in Appendix B

4.2. Question 2: Do you agree or disagree with the proposed requirement that if any person responsible for a dog fails to clear up and/or remove any faeces deposited by the dog they can be requested by a Constable or an authorised officer to do so within the areas shown on the map in Schedule 2.

The consultation highlighted that 95.1% of respondents supported this proposal

There were 33 comments in relation to this proposed Order, specific issues highlighted in the responses included:

- That the 'stick and flick' approach should be taken in more rural areas.
- That any enforcing officer should carry a supply of bags to give someone the opportunity to pick up and remove their dogs faeces

Full comments can be seen in Appendix C

4.3. Question 3: Do you agree or disagree with the proposed requirement that any person responsible for a dog must have with them an appropriate means to pick up dog faeces deposited by that dog within the areas shown on the map in Schedule 2? The consultation highlighted that 92.9% of respondents supported this proposal

Specific issues highlighted in the responses included a response from the Kennel Club (Appendix I) stating 'these proposals in certain circumstances would perversely incentivise dog walkers not to pick up after their dog. Should a dog walker on witnessing their dog fouling realise they are down to their final poo bag (or other receptacles), they will be forced into a decision of whether to use the bag and risk being caught without means to pick up, or risk not picking up in order to retain a means to pick up should they be stopped later on their walk'. This was also echoed in some of the other responses. Concern was also raised over the definition of appropriate means and the possibility over legal challenges over this.

Full comments can be seen in Appendix D

5.0 Dogs on Leads

Proposed Order Four

A person in charge of a dog on any public place within the Borough of Dacorum must comply with a direction given to them by a Constable or a person duly authorised by the Council to put and keep the dog on a lead (no more than 2m fixed length) unless: (a) they have reasonable excuse for failing to do so, or

(b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so.

5.1. Question 4: Do you agree or disagree with the proposed requirement that dogs must be placed on a lead if required by a Constable or an authorised officer within the areas shown on the map in Schedule 2?

The consultation highlighted that 91.9% of respondents supported this proposal

The Kennel Club strongly welcomed this order in their response they stated that they strongly welcome 'dogs on lead by direction' orders, as these allow responsible dog owners to exercise their dogs off lead without restriction providing their dogs are under control, whilst allowing the local authority powers to restrict dogs not under control. A small number of respondents wanted to see dogs on leads across Dacorum at all times. There was also a number of responses requesting areas where dogs could be exercised securely within a fenced dog area.

5.2. Question 5: Do you agree or disagree with this proposal to define the length and type of lead to be used when there is a requirement for a dog to be on a lead?

The consultation highlighted that 72.4% of respondents supported the proposal

There were over 140 written responses to this question and the majority of these written responses were against defining the length of the lead. Specific points highlighted were that any lead should be okay as even an extendable lead can be locked to a certain length, different dog breeds should have different lead lengths and that it wouldn't be fair to make people go out and buy new leads.

Full comments can be seen in Appendix E

6.0 Dog Exclusion Zones

Proposed Order Five

A person in charge of a dog in a public space within the borough of Dacorum Borough Council is prohibited from allowing the dog to enter the "Dog Exclusion Zones" these include fenced children's play areas, adventure playgrounds and splash parks defined in Schedule 1 hereto;

6.1. Question 6: Do you agree or disagree with the proposed requirement that dogs should be prohibited from all children's play areas?

The consultation highlighted that 89.6% of respondents supported this proposal.

One of the main points raised in the consultation for this order was the lack of fencing around some play areas including the new play area in Gadebridge Park and the play area on The Moor in Berkhamsted. The other main point raised was that perhaps people could just be asked to keep their dogs on a lead instead of excluding them entirely. Comments also suggested that we consider making an enclosed dog play area to allow owners the chance to let dogs off a lead safely.

Full comments can be seen in Appendix F

7.0 Other Concerns

The consultation also asked for other dog related issues that the respondents thought were detrimental to their quality of life in Dacorum which they would like to be considered for inclusion in any order that is implemented.

There was a wide range of responses to this question these can be found in Appendix H where they have been grouped in similar responses, the responses also highlighted some additional play areas to include.

The Kennel Club also suggested wording for the definition of assistance dogs this can be seen in Appendix K.

8.0 Enforcement

- 8.1 If the Order is imposed, 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 sanction will need to be developed. The Councils enforcement policy must be followed in all instances.
- 8.2 Furthermore, there is currently no dedicated resource, enforcement sits across a numbers of different council services. Accordingly, a coordinated and targeted approach to enforcement, working together with other enforcement agencies, will need to be developed.