



Cabinet



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Report for:	Cabinet
Title of report:	Renewal of Dog Public Space Protection Order
Date:	
Report on behalf of:	Councillor Banks, Portfolio Holder for Regulatory and Community
Part:	I
If Part II, reason:	N/A
Appendices:	Appendix 1 Overview and Scrutiny Paper June 14 th 2022 Appendix 2 Overview and Scrutiny Minutes 14 th June 2022 Appendix 3 Cabinet Paper 2019 Appendix 4 Community Impact Assessment
Background papers:	Public Space Protection Orders – Guidance for Councils, Local Government Association Anti-Social Behaviour, Crime and Policing Act 2014, Anti-Social Behaviour Powers, Statutory Guidance for Frontline Professionals, Home Office
Glossary of acronyms and any other abbreviations used in this report:	PSPO – Public Space Protection Order PCSO- Police Community Support Officer ASB – Anti-Social Behaviour

Report Author / Responsible Officer

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Corporate Priorities	A clean, safe and enjoyable environment Building strong and vibrant communities Ensuring efficient, effective and modern service delivery
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Wards affected	All Wards
Purpose of the report:	1. To approve the extension of the Dog Control Public Space Protection Order, as the current order will expire on 28 th July 2022.
Recommendation (s) to the decision maker (s):	1. That Cabinet approves the extension of the Dog Control Public Space Protection Order.
Period for post policy/project review:	

1 Introduction/Background:

The current Public Space Protection Order (Dog Control) 2019 is due to expire on the 28th of July 2022. There is a need for this to be extended or withdrawn.

2 Key Issues/proposals/main body of the report:

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).

PSPOs 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.”

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.

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 our fines are currently set at £80.

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

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.

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;

The power to make PSPOs 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.

PSPOs 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.

3 Options and alternatives considered

Options to be considered include withdrawal, amendment or renewal of the Dog Control PSPO.

Withdrawal would reduce the powers available to the Council to deal with nuisance dog behaviour including fouling, means to clear fouling, dogs to be put on a lead at request of an authorised officer and exclusion of dogs from children's play equipment.

Renewal would allow officers to deal with the issues above by way of enforcement action where dog behaviour has breached one of the orders.

The department has continued to receive requests relating to anti-social dog behaviour. In addition to this, enforcement action has been taken by the Council's pilot enforcement partner, District Enforcement Ltd.

3.1 Current Orders

Dog Fouling

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;

Order Two

A person in charge of a dog in any public place within the Borough of Dacorum (Schedule 2) 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;

Order Three

A person in charge of a dog in any public place within the Borough of Dacorum (Schedule 2) 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.

Dog Control

Order Four

A person in charge of a dog on any public place within the Borough of Dacorum (Schedule 2) 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 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.

Exclusion of Dogs in Specified Areas

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 enclosed children's play areas, adventure playgrounds and splash parks (shown in Schedule 1)

3.2 Exception

Nothing in this Order shall apply to a person who –

- a) Is registered as a blind person on a register compiled under section 29 of the National Assistance Act 1948; or
- b) is deaf, in respect of a dog trained by Hearing Dogs for Deaf People (registered charity number 293358) and upon which he relies for assistance; or
- c) has a physical or mental impairment which has a substantial and long-term adverse effect on the ability to carry out normal day-to-day activities, in respect of a dog trained by any current or future members of Assistance Dogs UK or any other charity registered in the UK with a purpose of training assistance dogs and upon which he relies for assistance
- d) has a physical or mental impairment which has a substantial and long-term adverse effect on the ability to carry out normal day-to-day activities and in the reasonable opinion of the Council that person relies upon the assistance of the dog in connection with their disability

For the purpose of the orders

- a) A person who habitually has a dog in his possession shall be taken to be in charge of the dog at any time unless, at the time of the offence, some other person is in charge of the dog

- b) Being unaware of the defecation (whether by reason of not being in the vicinity or otherwise), or not having a device or other suitable means of removing the faeces shall not be a reasonable excuse for failing to remove the faeces.
- c) The Borough of Dacorum is shown in Schedule 2
- d) A person duly authorised by the Council means an employee, partnership agency or contractor of Dacorum Borough Council who is authorised in writing by Dacorum Borough Council for the purpose of giving direction under the order.

4 Consultation

Public Consultation on the measures that are currently in place for the Dog Control Public Space Protection Order has been carried out. In addition to this, Hertfordshire Police, Hertfordshire Highways, Boxmoor Trust, National Trust and Parish Councils have been consulted.

After the consultation period, National Trust have since stated that they wish to review the position regarding National Trust land and previous adoption of the 'Stick and Flick' approach. National Trust will be meeting with Officers on 1st July to look at options to review the current arrangements in the Public Space Protection Order (Dog Control) which may result in a variation being brought to Cabinet at a later date.

Members asked that the splash park dog exclusion zone be amended to allow the café to be used by dog walkers. Upon further investigation of the area and consideration of their wishes to protect families and children using the splash park, it is currently deemed impractical to amend the geography of the area to accommodate this. However, as part of the old town project, this will be reviewed and, in the meantime, there will be additional signage to direct dog owners to the food businesses and facilities in the Old Town area.

5 Financial and value for money implications:

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. Existing signage for the Dog Control PSPO is in situ, so there will be maintenance and replacement costs for damaged signage.

There is also a cost for enforcement of the Public Space Protection Order, this is currently enforced by District Enforcement Ltd as a pilot scheme, with 22% of the income from these fines going to the Council and 78% retained by District Enforcement Ltd. If this scheme is not continued, there will be an additional cost associated with enforcement of this order.

Value for money

PSPOs are seen as a more cost-effective means of controlling the activities in question rather than under byelaws, and they also provide for a wider range of enforcement options.

6 Legal Implications

Public Space Protection orders are made under the Anti-social Behaviour, Crime and Policing Act 2014. Certain criteria must be met prior to the Council making the order.

7 Risk implications:

There will be risks associated with Council enforcement officers and others who will be tasked with enforcing the PSPO and appropriate training will need to be given. Risk assessments will be completed for the enforcement activity and all reasonable precautions taken to minimise any risk.

There are also reputational risks in terms of the Council being perceived as enforcing against vulnerable persons and seeking to criminalise certain behaviours which would not normally attract fixed penalty notices or prosecution for non-payment.

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.

Risk Description	Mitigations	RAG Status
Bad publicity due to level of fine issued	<ul style="list-style-type: none"> ▪ Consultation has taken place to understand any issues that may lead to bad publicity ▪ Fines are standard for PSPO as agreed by Cabinet ▪ Communication in place and will be continued to seek compliance prior to need for fines to be issued 	
Poor payment of fines, therefore limited impact	<ul style="list-style-type: none"> ▪ Work has taken place with legal about streamlining prosecution process for non-payment including standardising templates ▪ More emphasis put on initial messaging to those receiving fines about consequences, as well as better follow up ▪ Past experience of collection of such fines shows a high payment rate (above 70%) and all others go to prosecution 	
Lack of resources to take these fines forward	<ul style="list-style-type: none"> ▪ 3rd Party on street enforcement team in place, working 7 days a week ▪ Re-investment of fines to increase capacity if needed 	
Lack of evidence to support follow up action	<ul style="list-style-type: none"> ▪ All Officers are required to provide statements to support offence as well as attend court ▪ Use of body worn cameras by 3rd party enforcement officers ▪ Quality assurance checks carried out by Management ▪ Contract with 3rd party company results in payment only for each successfully paid fine 	
Inconsistent approach to issuing, leading to loss of reputation	<ul style="list-style-type: none"> ▪ Operational policy in place around fixed penalty notices ▪ Training of officers issuing tickets 	

	<ul style="list-style-type: none"> Monthly performance checks to understand what has been issued by whom and why 	
Cost of administering the scheme outweighs the benefits	<ul style="list-style-type: none"> Contract with 3rd party company results in payment only for each successfully paid fine Systems set up to minimise cost of the scheme, including on line payment system 	
3 rd party officers fail to follow council policies and procedures, leading to loss of reputation	<ul style="list-style-type: none"> Clear contract in place with 3rd party Monthly performance and monitoring meetings Team leader conducts regular 1-2-1 meetings, team meetings and checks 	
Proposal not agreed leading to limitations of action by officers	<ul style="list-style-type: none"> Offences would have to be pursued through use of legal notices where feasible (e.g. Community Protection Notices) or prosecution Those FPNs already in place could still be enforced at the levels already set 	

8 Equalities, Community Impact and Human Rights:

A Community Impact Assessment was carried out in 2019, and this exercise was repeated in 2022. The Public Space Protection Order continues to have a positive impact on the community by addressing antisocial dog ownership by a minority of people. Dogs that aid those with disabilities are excluded from the requirements of the Order.

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.

9 Sustainability implications (including climate change, health and wellbeing, community safety)

This Order will improve community safety issues regarding dog behaviour.

10 Council infrastructure (including Health and Safety, HR/OD, assets and other resources)

The continuation of this order should not have any implications on current Council Infrastructure. Currently enforcement of this order is carried out by District Enforcement Ltd. If this pilot is not continued, resources will need to be found internally to enforce this order.

11 Statutory Comments

Deputy Monitoring Officer:

Further to section 60 of the Anti-social Behaviour Crime and Policing Act 2014, a public space protection order cannot be in force for more than three years unless it is extended before its expiry. The requirement to undertake the necessary consultation in relation of the proposed extension of the Dog Control PSPO has been met and will not, therefore, pose a risk of legal challenge.

Deputy S151 Officer:

Enforcement of the current PSPO is carried out by a third party under a pilot scheme, who retain a proportion of income generated from fines issued. Should this arrangement cease after the pilot period has ended, any costs associated with enforcement of the PSPO would be expected to be met within the current approved resource for the service.

12 Conclusions:

In order to make a recommendation to cabinet the officers must ensure that the legal requirements mentioned in section 2 of this report have been properly considered.

Activities included in the PSPO have continued within the Authorities area and have a detrimental impact on the quality of life of those in the locality

This point can be demonstrated by the results of the consultations, 754 respondents have stated that dog behaviour has detrimentally impacted their life, in addition to this Environmental and Community Protection has received 471 animal related service requests indicating this is a concern for members of the public. 216 requests have been submitted to Environmental Services to clear dog fouling on the highway. Despite the PSPO being introduced 689 respondents highlighted they had come across antisocial dog behaviours within the borough and 28 Fixed Penalty Notices have been served for breach of the PSPO demonstrating it is likely that these behaviours have continued to be carried out in a public place and be persistent and unreasonable justifying the renewal of the PSPO.

The intention of the OSC report was to amend the splash bark dog exclusion zone to allow dog owners to use the café facilities. This however would prove logistically difficult and costly, and would be at the expense of the splash park users. Therefore, Portfolio Holder suggests that this is kept the same and that signage is installed in line with general plans for the park to redirect dog owners to facilities in the nearby old town.

Officers and the Overview and Scrutiny Committee recommend the PSPO is extended, with the same Orders approved in 2019.