



**AGENDA ITEM:**  
**SUMMARY**

Report for:	Cabinet
Date of meeting:	19 <sup>th</sup> March 2019
Part:	1
If Part II, reason:	

Title of report:	<b>Public Space Protection Order (Dog Management)</b>
Contact:	Councillor Neil Harden Portfolio Holder for Community and Regulatory Services  Author/Responsible Officer: David Austin – Assistant Director (Neighbourhood Delivery) Emma Walker – Group Manager Environmental & Community Protection Dawn Rhoden –Team Leader Operations & Public Health
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	That Cabinet agree to:  1. Approve the implementation of a Public Space Protection Order under the Anti-Social Behaviour, Crime and Policing Act 2014 with restrictions relating to the control of dogs Borough wide as set out in paragraph 4 of the report. from 1 <sup>st</sup> July 2019.  2. To set £75 as the sum payable for a fixed penalty notice.
Corporate	Safe and Clean Environment Maintain a clean and safe environment

Objectives:	
Implications:	<p><u>Financial</u></p> <p>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> <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 dog management PSPO will be carried out within existing resources.</p> <p><u>Value for Money</u></p> <p>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>
'Value For Money Implications'	
Risk Implications	<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. 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>
Community Impact Assessment	N/A

Health And Safety Implications	Some Health & Safety implications may arise from the enforcement of orders, this will be incorporated within individual service risk assessments for authorised enforcing officers.
Monitoring Officer/S.151 Officer Comments	<p><b>Monitoring Officer:</b></p> <p>The PSPO will assist with the prevention of anti-social behaviour in the borough. There will need to be a proportionate approach to enforcement particularly where the order is being breached by young and vulnerable persons.</p> <p><b>Deputy S.151 Officer</b></p> <p>The implementation of this recommendation will be funded through existing approved budgets.</p>
Consultees:	<p>Hertfordshire Police Hertfordshire Highways Residents of Dacorum Boxmoor Trust National Trust Parish Councils</p>
Background papers:	<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 24<sup>th</sup> April 2018. Proposal for consultation to commence.</p> <p>Overview and Scrutiny Minutes 20<sup>th</sup> November 2018</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 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. 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**

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 People Dispensary for Sick Animals (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 dog management PSPO covering the whole of Dacorum.

### **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.

A report was taken to OSC on the 20<sup>th</sup> November 2018 following the public consultation. After this meeting the proposed orders were amended and further consultation was undertaken with the Chief Officer of police and the Policing and Crime Commissioner for Hertfordshire. No comments were received from this consultation.

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. Proposed Orders**

#### **4.1 Dog Fouling**

##### 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 (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;

##### Proposed 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.

#### 4.2 Dog Control

##### Proposed 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.

#### 4.3 Exclusion of Dogs in Specified Areas

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

#### 4.4 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

#### 4.5 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.

## **5.0 Enforcement**

- 5.1 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.
  
- 5.2 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.