



Public Space Protection Order, Dog Constraints

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Cabinet Member (Portfolio Holder):	Dan Morris		

1. Synopsis

The purpose of this report is to seek Cabinet Approval for the introduction of a Public Space Protection Order for Shropshire to control dog fouling, taking account of a public consultation exercise approved on 18th October 2023.

2. Executive Summary

- 2.1. In response to public complaints, proposals were made to Cabinet last October to introduce a Public Space Protection Order (PSPO) to address dog fouling and nuisance.
- 2.2. These proposals have been presented to the public for comment (List of consultees provided at Appendix E) and the Council has received a largely positive response. The public consultation exercise indicates the PSPO should be introduced, subject to some minor amendments as discussed in section 9 and conclusions detailed in section 10 below, and with a supporting public education/information exercise to help raise awareness necessary to encourage behaviour change with inconsiderate owners.
- 2.3. The Anti-social Behaviour, Crime and Policing Act 2014 introduced tools and powers for use by councils and their partners to address anti-social behaviour (ASB) in their local areas. These tools are to be used for tackling ASB, focussing on the impact such behaviour can have on both communities and individuals.

- 2.4. Public Space Protection Orders (PSPO) are one of the tools available under the Anti-social Behaviour Crime and Policing Act 2014. PSPOs are wide-ranging and flexible powers for local authorities, which recognise that councils are often best placed to identify the type of activities which are having a detrimental effect upon the quality of life for those who live in, work in or visit the local authority area. A PSPO identifies these activities, sets out conditions which aim to prevent or reduce their detrimental effects, defines the public space to which these conditions apply by way of a map identifying 'the restricted area'. This proposed PSPO orders anyone entering any public space in the restricted area to comply with the conditions.
- 2.5. This report sets out the rationale behind the introduction of the proposed PSPO, the proposed conditions, the findings from the recent public consultation exercise, and evidence.
- 2.6. It asks Cabinet to make a Public Space Protection Order if it is satisfied on reasonable grounds that the legal tests are met.
- 2.7. The Proposed Order proposes four prohibitions, specifically and are discussed in more detail in section 9 - Discussion:
- prohibition of dog fouling in public areas and of the failure to appropriately remove and dispose of dog waste.
 - exclusion of dogs from play areas, equipped and fenced sports areas.
 - dogs on a lead by direction.
 - dogs on a lead on a highway.
- 2.8. West Mercia Police ('the Police'), are a statutory consultee and currently would be the other main agency responsible for undertaking the day-to-day enforcement of the Order, in partnership with the Council. The Police and Crime Commissioner, and local Police have been consulted and have no comments to make at this time. In normal circumstances the Police would be engaged to agree a memorandum of understanding to take action when reports are made directly to them. Given it is intended for the Council to take action on a targeted and intelligence led basis this may not be necessary as council officers will take the bulk of enforcement action. If this proves ineffective then the Council will engage further and seek Police assistance through a memorandum.
- 2.9. **The Shropshire Plan - Implications**
- a. Healthy Living – supporting residents to take responsibility for their dogs and the health of others, and preventing ill health
 - b. Healthy Economy – ensuring that Shropshire is a healthy destination for tourists
 - c. Healthy Environment – enabling safer communities by reducing anti-social behaviours and risk of harm from stray dogs
 - d. Healthy Organisation – ensuring Shropshire's internal capacity and capability is complemented effectively and that internal resources are organised efficiently and effectively to take the necessary enforcement to encourage responsible behaviour.

2.10. The results of the public consultation exercise are shown in Appendix A.

3. Recommendations

That Cabinet

- 3.1. Accepts the position as set out in this report and approves a Public Space Protection Order for Shropshire with the proposed conditions in the restricted area set out in Appendix B (“the Order”) and as defined by the map with an effective commencement date of the 1st June 2024 for a period of 3 years.
- 3.2. To delegate to the Executive Director of Place to authorise officers to issue FPN’s and directions under the order and agrees that the Council use Fixed Penalty Notices (FPN), in appropriate circumstances, where there is reason to believe that an offence under the Public Space Protection Order has been committed by any person. And further that the level of the FPN is set at £100 reduced to £50 if paid within 10 days.
- 3.3. for the purpose of discharging the Order instructs the Executive Director: Place to publish and cause to be erected notices in accordance with Regulations made under the Anti-Social Behaviour, Crime and Policing Act 2014.
- 3.4. delegates authority to the Executive Director: Place to engage with any other organisation, not being part of Shropshire Council, where officers of that organisation are to be authorised by Shropshire Council to undertake enforcement responsibilities under the Order.
- 3.5. delegates authority to the Executive Director: Place to engage with any other organisation, not being part of Shropshire Council, where officers of that organisation have been authorised by Shropshire Council to undertake enforcement responsibilities under the Order (as extended), and to define those enforcement responsibilities and any other requirements within an agreed Memorandum of Understanding and, where necessary, to amend or create any further Memoranda of Understanding at any time during the period that the Order (as extended) is in force.
- 3.6. That in support of the Order a public education and information programme is implemented and as shown in Appendix C.

Report

4. Risk Assessment and Opportunities Appraisal

- 4.1. It is considered appropriate to implement legal powers to take enforcement action when required to encourage responsible pet ownership. Currently the council is vulnerable to challenge about the lack of enforcement and indeed has been criticised by the public that enforcement action has not been taken. There is considerable reputational risk for the council if it does not respond to this criticism and fails to act

following the consultation exercise.

- 4.2. Under the Anti-social Behaviour, Crime and Policing Act 2014 ('the Act'), where a public spaces protection order is introduced a legal challenge over the validity of such an order is possible for a period of up to six weeks. The Order will, therefore, be subject to a six-week period in which it may be challenged.
- 4.3. In-line with the requirements of the Act, a public consultation seeking views from statutory consultees and the public on the proposals for the Order was undertaken and results are contained in Appendix A
- 4.4. The necessary consultation included the following
 - 4.4.1. As statutory consultees West Mercia Police and the Office of the Police and Crime Commissioner (OPCC), and the chief officer of police of the local policing body, for the restricted area were directly notified of the consultation.
 - 4.4.2. Normally the owners or occupiers of land within the restricted area would be directly consulted. However, given the scope and area envisaged this would be unreasonable and impracticable and because the restricted area applies to the county of Shropshire and to publicly controlled land. It was concluded therefore, that consultation with Town and Parish Councils would be sufficient.
 - 4.4.3. The council has also consulted with notable organisations with interests in dog welfare, including RSPCA and Dog's Trust.
- 4.5. Cabinet should properly consider the rights of freedom of expression and freedom of assembly set out in the European Convention on Human Rights and the Human Rights Act 1998 when making the Order. The recommendations in this report to implement the Order is unlikely to be at variance with the Human Rights Act 1998 and is also unlikely to result in any adverse Human Rights Act implications.
- 4.6. An initial screening Equality, Social Inclusion and Health Impact Assessment (ESHIA) has also been undertaken ahead of the consultation: this is attached as Appendix D. The public feedback and overall impact on equality is generally positive across the nine Protected Characteristic groupings set out in the Equality Act 2010 and across the whole county, due to health and well-being benefits for everyone in the community, if there is less dog fouling as a result of this policy being implemented.
- 4.7. There is also potential for positive equality impact for the groupings of Age, Disability, Pregnancy and Maternity, and Sex, in particular. As with other policies in relation to the public realm, this is in terms of mental well-being opportunities arising for people in these groupings to feel safer when outdoors for health benefits, education, work or leisure, or simply walking to their local shops and amenities. This is particularly so for families with young children, wheelchair users, and older people who may consider themselves to be vulnerable and less likely to venture out without pavements that can be navigated safely by them and their carers, and that are clear of detritus and dog faeces. This is also reflected in the consultation responses.
- 4.8. The grouping for whom there are positive health and well-being impacts is Age, specifically children under 5 but also children who are being encouraged to walk to school or to leisure activities and are put off from doing so due to dog fouling. For the grouping of Disability, there may also be particular distress for those with neurodiverse conditions or attachment disorder, for whom the presence of dog

fouling can cause visible and physical distress. Children (Under 5) will have less potential to be harmed by un-cleared faeces or distressed by coming into contact with it. Young children are most likely to be exposed to dog fouling through their outside play activities and potential health impacts, if personal hygiene has not fully developed.

- 4.9. Mitigation of negative impacts is also anticipated to be necessary, as for some groupings, removing dog fouling presents as a challenge. These are the groupings of Age, Disability, Pregnancy and Maternity, and people in these and other groupings who have caring responsibilities. For example, wheelchair users and mobility scooter users could be particularly affected by dog fouling on streets and pathways, due to either difficulty picking up dog faeces if it has been caused by their own dog, or to difficulty dealing with dog fouling that they encounter which may go onto the wheels of their wheelchair or mobility scooter.
- 4.10. The top theme within comments received through the consultation when asked about diversity, equality and social impact were the impacts on dog owners' mental health and ability to exercise. There were certainly views that exclusion zones should be kept to a minimum and that owners should have access to open space for their dogs to exercise.

5. Legal Implications

- 5.1. The relevant statutory provisions are contained in The Anti-social Behaviour, Crime and Policing Act 2014, s59 - s75
- 5.2. A local authority may make a PSPO if satisfied on reasonable grounds that two conditions are met (s59.1)
- 5.3. 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 the area that they will have such an effect. (s59.(2))
- 5.4. The second condition is that the effect, or likely effect, of the activities –
- 5.4.1. (a) is, or is likely to be, of a persistent or continuing nature
 - 5.4.2. (b) is, or is likely to be, such as to make the activities unreasonable, and
 - 5.4.3. (c) justifies the restrictions imposed by the notice.
- 5.5. The only prohibitions or requirements that may be imposed are ones that are reasonable to impose in the Order
- 5.5.1. (a) to prevent the detrimental effect referred to (5.3 above) from continuing, occurring, or recurring, or
 - 5.5.2. (b) to reduce the detrimental effect or reduce the risk of its continuance, occurrence or recurrence.
- 5.6. The decision taker should consider whether the statutory test is met, and further consider whether the nature of the incidents and ongoing public complaint have a

detrimental effect on the quality of life of people who live in or work in the restricted area. Details of the extent and nature of public complaint are detailed in the previous report to Cabinet 18th October 2023 and included 321 complaints in 21/22 and similarly 332 in 22/23.

- 5.7. There should also be careful consideration of whether the order and each condition is a proportionate and a necessary response to the presented problems and is addressed in more detail in the discussion session of this report at 9.5.

6. Financial Implications

- 6.1. Failing to comply with the order without reasonable excuse is a criminal offence, and the penalty is a fine (s67 of the Act).
- 6.2. An identified breach of the Order is a criminal offence (s68) and a person guilty of an offence is liable on summary conviction to a fine not exceeding Level 3 (maximum £1,000). However, the legislation enables such offences to be dealt with, where appropriate, by way of a Fixed Penalty Notice (FPN), which, if paid, would discharge an individual's liability to conviction for the offence.
- 6.3. The Consultation suggests a penalty of £100 is reasonable and sufficient to deter contravention of the order.
- 6.4. It is also common practice for such penalties to be reduced if paid promptly and a reduction to £50 if paid within 10 days is proposed and considered reasonable.
- 6.5. It should be noted there are costs associated with legal proceedings should the issue of a FPN be contested. Any costs, including officer time, associated with investigating breaches and bringing legal proceedings in the criminal courts will have to be met from service budgets. This will include back-office administrative support, additional officer time to review criminal reports and accompanying evidence, administering appropriate sanctions, undertaking investigations for cases requiring formal action and finally costs associated with bringing criminal legal proceedings. However, it is considered that revenue from FPN's will be sufficient to mitigate these impacts.
- 6.6. There are also no revenue implications expected as extra signage and staff time associated with the initiative will be contained in existing budgets and is anticipated to be offset by the positive results of behavioural change and less demand for service.
- 6.7. As indicated where enforcement is required there may be costs associated with legal action, but it is anticipated with targeted action and preceding positive publicity that these costs will be kept to a minimum and within existing service budgets.

7. Climate Change Appraisal

- 7.1. The introduction of a county wide Public Space Protection Order to encourage responsible dog ownership is not expected to generate any direct impacts for the generation or capture of carbon emissions, the generation of renewable energy, or for adaptation to the impacts of climate change. There may be some indirect positive

effects for carbon reduction if the mitigation of the existing negative impact of dog fouling leads to more extensive use of local open space.

8. Background

- 8.1. Following a series of routine audits into the Dog Warden service, public complaint and an increasing nuisance from dog fouling, a management review concluded that the service could be improved with the introduction of a county wide Public Space Protection Order (PSPO).
- 8.2. The review also considered that enforcement on its own would be insufficient to secure a change in attitudes and the behavioural change needed to address the volume of complaints about dog fouling in public areas. To meet this challenge, it was considered that a proactive public information campaign advising of health considerations, the impact of dog nuisance and the reasons for subsequent enforcement action would be needed.
- 8.3. On the 18th of October 2023 Cabinet approved proposals to consult on the introduction of a Public Space Protection Order for the council's administrative area to strengthen the Council's enforcement powers.

This will allow the service to address public perception and complaints and provide the evidence necessary to introduce a legal framework for the council to take enforcement action against pet owners who allow their animals to foul pavements and in public amenity spaces without collecting and disposing of the waste.

- 8.4. The Anti-social Behaviour, Crime and Policing Act 2014 ('the Act') introduced Public Spaces Protection Orders ('Orders'), which are intended to provide the means of preventing individuals or groups committing anti-social behaviour. Section 59 of the Act sets out the test which must be satisfied before a local authority makes an Order... "where the behaviour is having, or likely to have, a detrimental effect on the quality of life of those in the locality; be persistent or continuing in nature; and be unreasonable".
- 8.5. The power to make an Order rest with local authorities, in consultation with the police and other relevant bodies who may be affected. A local authority can make an Order in respect of any public space within its administrative boundary. The definition of public space is wide and includes any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.
- 8.6. An Order can be in force for any period up to a maximum of three years after which time the local authority must consider whether to extend the Order.
- 8.7. A challenge to the validity of the Order or aspects of it can be lodged by anyone who lives in, or regularly works in or visits the area in the High Court within six weeks of issue. Further challenge can only be made when an Order is varied by the local authority.
- 8.8. An order may be applied wherever there is material evidence of anti-social behaviour, for example, in reports to the police, local authorities or partner agencies.

- 8.9. Orders can be enforced by a police officer, a police community support officer, authorised council officers and employees of other delegated organisations. It is proposed that the power for Shropshire Council to authorise any other person be included.
- 8.10. In relation to a breach of a PSPO, if the PSPO relates to anti-social behaviour, then the police or 999 need to be called. For non-urgent breaches, the public can call 101 or if the breach is related to environmental crime, such as fly-tipping or dog control then public can contact Shropshire Council directly.
- 8.11. The proposals contained in this report and for the Order are intended to encourage responsible dog ownership and control of animals in public spaces and as follows:
1. To prevent public health nuisance the first prohibition is asking dog owners to clean up after their animals have defecated and to disposal of the waste in a suitable receptacle
 2. To prevent public health nuisance particularly for the young and vulnerable members of the public dog owners are being asked to exclude their animals from fenced and enclosed play, equipped and sports areas.
 3. To prevent the nuisance of uncontrolled dogs in public areas the Order provides authorised officers with the ability to ask dog owners to leash their animals 'by direction' and if required to issue fixed penalty notices if owners do not comply.
 4. The last prohibition proposed relates to animals being walked on the Highway and is asking for dogs to be 'leashed' to prevent a safety hazard for members of the travelling public, dog owners and the animals.
- 8.12. To control dogs in all public spaces throughout the county the restricted area for the purposes of the Order is proposed for the County of Shropshire as shown in the Order, detail contained in Appendix B.

9. Additional Information

- 9.1. There has been a good response to the public consultation exercise and as summarised below.

9.2. Consultation – Key Points

Good levels of response 561 online 16 written submissions from Shropshire and surrounding areas, but from predominantly an older age group, 55-64 years of age.

Approx' 2/3 found the proposals clearly presented with 63% in support of the proposals.

Strong support, over 80% for public information campaign.

Good levels of support for all proposals apart from first proposed prohibition for allowing dogs to foul, the offence supported was for not picking up and disposal.

Concerns raised included:-

Impact on owners mental and physical health

Availability of space to exercise dogs (animal welfare)

Fairness and enforceability of fines
Need to focus on irresponsible owners
Failure not to enforce or follow up reports
Highest level of agreement was dog on leads by direction and failure to remove and dispose of waste (to create an improved environment)

Other comments raised:-
Exemptions for working dogs
Availability of bins and bags

9.3. **RSPCA & Dog's Trust Response - Key Take Aways**

Adequate provision of disposal points
Rigorous, targeted and proportionate, enforcement
Promote responsible dog ownership, education
Exclusion areas to be kept to a minimum and to enclosed areas
Open sport areas should be excluded so animals can exercise freely and for animal health reasons
Support for dogs on leads by direction
Adequate signing for exclusion and dog free areas
Adequate Bin provision

9.4. **The PSPO proposal consulted on**

To implement a Public Spaces Protection Order for the prevention of dog fouling and the collection and disposal of dog waste by dog owners. This includes the following:
The prohibitions relate to:

1. Allowing dog fouling in public areas in the restricted area.
2. Failure to appropriately remove and dispose of dog waste if a dog has been allowed to foul.
3. Dog exclusion from play areas, equipped and fenced sports areas.
4. Dogs on leads by direction.
5. Dogs on Leads on the Highway.

Orders can be enforced by a police officer, a police community support officer, authorised council officers and employees of other delegated organisations.
A breach of the PSPO can be dealt with through the issuing of a Fixed Penalty Notice of up to £100, or a level 3 fine (max £1000) on prosecution.

Under prohibition 4 authorised officers will have the ability to direct members of the public to leash their animals where they are creating a nuisance or where they are not under control.

In establishing a PSPO, appropriate signage must be displayed in accordance with the requirements of the Act on entry points to the public area and within the said area.

9.5. **Discussion**

The main objection contained in the consultation responses concerned the first prohibition and that it was unfair to penalise owners for allowing their dogs to foul.

This is accepted and it is proposed to combine the 1st and 2nd prohibition into one and as follows – allowing a dog to foul and failing to appropriately remove and dispose of dog waste.

Another issue which raised comment was where dogs should be allowed to exercise and in general there was support for the exclusion of dogs from fenced, enclosed or equipped play areas. However, there are varying views about sports pitches and large open spaces, which are currently unrestricted, and a proportion of responders concerned about animal welfare and owner's mental health and wellbeing, and therefore access to suitable areas for exercise. On one hand it could be argued that the health benefits warrant exclusion from marked sport pitches, but on the other, this is an unreasonable restriction and prevents dogs exercising. It also introduces room for confusion about which areas are accessible, for example areas between pitches or walkways to and from, which may be problematic in terms of enforcement. Regardless, it could also be argued that the proposed, combined 1st and 2nd prohibition and 4th. dogs on leads by direction, provides sufficient powers for enforcement purposes. On balance it is considered that exclusions should be limited to fenced, enclosed and equipped play areas and that further restrictions only be considered for open sports areas/parks at the end of the PSPO term (3 years) and if evidence suggests this is necessary.

Concerns were raised and through the consultation about the potential impact of a PSPO on working animals and the rural economy of the county. Plainly problems of dog fouling are more acute in an urban setting, but not exclusively so, and any order introduced should not impact unduly on the ability of the farming community to go about its business. However, neither should their activity impinge significantly on the public or in public areas. Farming activity will be mostly confined to private property accept where movement is required for livestock, hunts, and possibly Shoots. In these circumstances it would be reasonable to exempt working animals albeit for organised and timed events, for example hunts to avoid abuse and to enable enforcement should it be necessary.

Exemptions for the public with disability was another point raised during the consultation, and plainly it would be unfair to penalise an individual who is unable to comply with an Order. And previous Orders, and as the norm, have excluded by exemption individuals who are registered blind. There is debate about whether the individual or the animal should be exempt, and it is suggested that it should be the individual as a guide dog could be walked by an abled bodied person who should comply with the proposed Order. This argument can be extrapolated to other forms of disability and again it is suggested it would be unreasonable to penalise those who are unable to comply and therefore it is safest to include exemption for registered disabled persons, not their animals.

The consultation indicates agreement with the proposal to direct owners to put their dogs on leads where they are being a nuisance in a public area and for the safety of the public enjoying this space. Similarly, the consultation suggests dogs should be under control on the highway and whilst there have been objections raised about this particular aspect of the proposed control the safety consideration associated with dogs straying uncontrolled into live traffic would suggest this

control is reasonable.

The value of a fixed penalty fine was also raised with varying views concerning whether it was sufficient or too much. The general view and on balance would be the value is about right (£100) to provide a deterrent without being unreasonably punitive.

The remaining points raised in the consultation related to supporting functions for the PSPO, for example adequate provision of bins, signage and indeed public education which are accepted and will be taken into account when introducing measures, so any enforcement action taken is reasonable and proportionate.

10. Conclusions

- 10.1. The proposal originally made to Cabinet last October has been carefully considered against the result of the public consultation and discussed in section 9 above, and the following conclusions reached, and subject to Cabinet approval will be reflected in the detail of the proposed PSPO.
- 10.2. That it is unfair to penalise individuals for the act of dog fouling, rather the act of not collecting and disposal of waste.
- 10.3. That it is reasonable to exclude, on the basis of health considerations, dogs from fenced, enclosed and equipped play areas.
- 10.4. Given concerns raised about the ability of the public to access open spaces for their own mental health considerations and for the welfare of their animals when exercising that the PSPO is sufficient at this time to control dogs and to take enforcement action where owners fail to comply or are inconsiderate of others.
- 10.5. That it is unreasonable to fine those who are unable to comply with the proposals for reasons of disability and therefore these groups should be excluded by exemption.
- 10.6. That controls for dogs on the highway and on leads by direction and for the safety of the public in these circumstances is also reasonable and proportionate.
- 10.7. That the value (£100) of the fixed penalty notice is reasonable and sufficient.
- 10.8. And finally, that the PSPO should be implemented with a support public education and information exercise, adequate bin provision and signage for enclosed exclusion zones so that any enforcement action taken is both reasonable and proportionate.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

Local Member: All

Appendices

Appendix A - Dog Warden Service, Public Spaces Protection Order Consultation Survey Report - January 2024

Appendix B – Proposed Public Space Protection Order

Appendix C – Public Education and Information Programme

Appendix D - Equality, Social Inclusion and Health Impact Assessment (ESHIA)

Appendix E – List of Consultees