

Report to: **West Devon Borough Council**

Date: **8 December 2020**

Title: **Public Space Protection Order – Dog Controls**

Portfolio Area: **Environment, Cllr Caroline Mott**

Wards Affected: **All**

Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken: 8 December 2020

Author: **Honey Foskett** Role: **Senior Specialist Environmental Health**

Contact: **01803 861191/email: honey.foskett@swdevon.gov.uk**

RECOMMENDATION:

That the Council RESOLVES to:

1. Adopt the Public Space Protection Order 2020 as attached at Appendix 1 to this report. The Order amends the existing Public Space Protection Order, Dog Control Articles as follows:

- a) to remove specified sites from the Order**
- b) extend for a further 3 year period**
- c) Introduce two (2) general articles that will apply across the Borough such that:**
 - i. Dog walkers must carry dog bags or other container to collect dog waste**
 - ii. Dogs are to be kept on leads on roads with speed zones up to 30mph.**

1. Executive summary

- 1.1 The Report asks Council to consider: extending the current Public Space Protection Order in relation to the Control of Dogs for a further 3 year period; remove specified sites from the current Order; and, introduce 2 general articles which will apply to the whole Borough relating to dog fouling and keeping dogs under control in the built environment.

Current specified formal garden sites for dogs on leads are:

- Letheran's Lane, North Tawton

- Primary School footpath from Chestnut Terrace to Green Hill, Lamerton
- Coronation Hall Grounds, Mary Tavy
- Taylors Green, Mary Tavy
- Women's Institute Garden, Mary Tavy
- Village Green, Blackdown
- Courtlands Play Area, Tavistock
- Whitchurch Play Area, Tavistock
- St Eustachius Churchyard, Plymouth Road, Tavistock
- Meadows, Tavistock
- Abbey Walk, Tavistock
- Benson Meadow, Pixon Lane, Tavistock
- St Johns Avenue, Tavistock.

Current specified dog exclusion sites are:

- Memorial Park, North Tawton
- Jubilee Field, Chagford
- Primary School Fields, Mary Tavy
- Cemetery, Plymouth Road, Tavistock
- Village Green, Sampford Courtenay
- Recreation Field, Lamerton

1.2 These Orders are made by the Council under the Anti-social Behaviour, Crime and Policing Act 2014 in order to meet its obligations to ensure residents' quality of life is not compromised by activities that are likely to have a detrimental effect on local amenity (such as dog fouling or dogs out of control). The Borough Council is obliged to review Public Space Protection Orders on a tri annual basis and to consult with the public and other stakeholders if changes are proposed to the Orders.

1.3 A Borough wide Public Consultation ran from 1st June to 31st July 2020 and responses are attached in Appendix 2.

1.4 Responses were received mainly from Okehampton Town Council and Bere Alston Parish Council on local proposals. Responses from the wider Borough were limited.

2. Background

2.1 The original Dog Control Order came into effect on 22nd October 2014 and was automatically converted unchanged, to a Public Space Protection Order in 2017 under the Act. The Council introduced the original Order to all public land within the Borough of West Devon and included the following provisions:

A. Fouling – offence of not picking up

1. Subject to the exceptions stated in the Order at Appendix 1, this article applies to all land which is in the administrative area of the Council and which is:

- Open to the air (which includes land that is covered but open to the air on at least one side); and
- To which the public are entitled or permitted to have access (with or without payment).

B. Dogs on leads – offence of not keeping dogs on leads

1. This article applies to all areas covered by Rule 56 of the Highway Code i.e., on the road, or on the pavement, or on a path shared with cyclists or horse riders
2. Areas with retail premises designated as zone 1 under the Environmental Protection Act 1990 i.e., where there are 2 or more commercial / shop premises
3. Car Parks
4. Cemeteries and Churchyards
5. Any fenced, hedged or walled pond, area of water or nature reserve
6. Marked sports fields whilst organised sport is in progress
7. Areas delineated as formal gardens.

C. Dogs on leads by direction – offence of not putting dogs on leads when asked by an authorised officer

1. Subject to the exceptions stated in the Order at Appendix 1, this article applies to all land which is in the administrative area of the Council and which is:
 - Open to the air (which includes land that is covered but open to the air on at least one side); and
 - To which the public are entitled or permitted to have access (with or without payment).

D. Dog Exclusion Areas – offence to give dogs access

1. This article applies to all land within the Council's administrative area comprising:
 - Any fenced, hedged or walled children's play area
 - Any fenced, hedged or walled bowling green
 - Any fenced, hedged or walled tennis court
 - Any fenced, hedged or walled skateboard or BMX park
 - Any fenced, hedged or walled putting green
 - any sporting or recreational facility pitch when sport is in play.
 - There are exemptions for those who need the help of assistance dogs.
 - There are number of sites specified in the original 2017 Order where Towns and Parishes contributed to the Dog Warden Scheme. All but Tavistock have now withdrawn from that Scheme.

The Council is proposing to add two further general provisions to the 2020 Order:

- Dog walkers must carry dog bags or other container to collect dog waste
- Dogs are to be kept on leads on roads with speed zones up to 30mph.

2.2 The 2017 Order has been in place for 3 years and, in accordance with the legislation, the Council now needs to decide whether to extend the existing Order based on evidence of need, update the Order or discharge or let the Order expire.

2.3 The Council can make a Public Space Protection Order in respect of any public space within its Borough boundary if it is satisfied on reasonable grounds that there are activities being carried out in the Borough which have a detrimental effect on the quality of life of those in the locality. The full criteria are set out in the legal implications in paragraph 6 below. The definition of public space is wide and includes any place to which the public (or any section of the public) has access (by right of express or implied permission).

2.4 The Council can extend, amend or discharge an Order in consultation with the Police and other relevant bodies.

2.5 A summary of the consultation responses can be found in Appendix 2. In brief:

- The public and stakeholders were asked for comment on the proposal to introduce 3 general articles:
 1. Dog walkers must carry dog bags or other container to collect dog waste
 2. Dogs are to be kept on leads on roads with speed zones up to 30mph, and
 3. The number of dogs walked by one person at any one time in one area should be limited to 4 dogs
- Feedback from Okehampton Town Council on Simmons Park and Bere Alston Parish Council on The Down in Bere Alston and the playing fields in Bere Ferrers, indicates a majority in favour of all three recommendations. There was a limited response from the wider Borough but from those who participated, the majority are in favour of all three recommendations.
- The limited response, particularly with regard to limiting the number of dogs walked (113 responses in total from across the Borough) brings into question the extent of the problem (1 documented incident) balanced against the additional work that would be required to issue exemption licences to professional dog walkers who may be affected by the Article. On balance the restriction is not recommended.

- In Okehampton with regards to Kempley Meadow public support is to allow dogs to be under control off the lead.
- In Bere Alston with regard to The Down and the playing fields in Bere Ferrers there is public support for the standard expressed in the original Order which is to allow dogs to be under control off the lead except when organised sport is in play on the playing fields.
- Dog exclusion from the partially fenced unmarked playing field on The Down, Bere Alston and dogs on leads at all times on the remaining area of The Down (the children's play area is enclosed and is a dog exclusion zone). The Parish Council consulted locally on 4 options:
 - To exclude dogs from the partially fenced playing field
 - Dogs on leads at all times on remainder of the site
 - To exclude dogs from the site whilst organised sport is in play
 - Dogs on leads whilst organised sport is in play

Data provided by the Parish Council indicates the community preference is for dogs on leads whilst organised sport is in play.

- Dog exclusion from the playing fields, Bere Ferrers or on leads at all times. There is a fenced children's play area and the tennis court is enclosed from which dogs are already excluded. The Parish Council did not respond to the consultation on options to exclude dogs or to keep dogs on leads whilst organised sport is in play. To keep dogs on leads during organised sport is the recognised national standard and the standard that currently applies on the playing fields.

- Data (which provides information and evidence on the extent of any issues) held on complaint levels is as follows:

2010/11	dog fouling complaints received 77
2011/12	dog fouling complaints received 87
2012/13	dog fouling complaints received 35
2014	51: Tavistock 19; Okehampton 14; Bere Alston 3; Buckland Monachorum 4 and the rest were 1's and 2's – from Flare records
2015	46: Tavistock 18; Okehampton 5; Lifton 5; Chagford 3; and the rest 1's and 2's again – From Flare records
2016	W2/360 cannot filter down to dog control issues only - Litter or dog mess reports 119
2017	141
2018	136 with 1 report through to EP – on checking W2/360 reports will go direct to FCC to clean so these reports are not followed up by Localities or EP
2019	78
2019/20	number of dog control complaints received in EP total 8: Okehampton 3; North Tawton 2; Bere Alston 1; Sourton 1; and Tavistock 1 – to date.

- In the 2016/17/18 and 2019 data, we have not been able to separate dog complaints from litter complaints which makes the data

about complaint levels inconclusive (this is due to the way data is held on our systems). Nevertheless, a consistent community view that the Order is a preventative measure that impacts on community expectation and is likely to improve community behaviour, appears widespread.

- This report recommends updates to the Public Space Protection Order as set out in the Recommendation above. The updates recommended reflect national standards that provide a framework within which whole communities can enjoy facilities whilst being mindful of other users with different goals.

3. Outcomes/outputs

3.1 Council Enforcement Officers provide a reactive monitoring and enforcement service. The application of Public Space Protection Orders provides West Devon communities with reassurance that there is a properly resourced mechanism in place to address dog related anti-social behaviour on lands within the Borough accessible to the public.

3.2 The Public Space Protection Order will provide the Localities Team with a uniform set of standards across the Borough that will make enforcement straightforward.

3.3 The Localities Team have received enforcement training that allows them to issue Fixed Penalty Notices for offences under the Anti-social Behaviour, Crime and Policing Act 2014. Some refresher training has been scheduled (postponed due to COVID19) to bring the team up to date with current procedures and giving officers authorisation to ask for offenders names and addresses.

3.4 Fines for Fixed Penalty Notices for dog offences are set at £100.00 per offence. Effectiveness of the Public Space Protection Orders can be measured through community satisfaction surveys on neighbourhood cleanliness (fewer complaints about dog fouling and out of control dogs) and income from fines.

3.5 Consultation with the Police – response from local policing body and the office of the Chief of Police respectively indicate support for a Borough wide standard.

4. Options available and consideration of risk

4.1 To apply a Public Space Protection Order, the Council must be satisfied on reasonable grounds that doing so is necessary to prevent:

- Occurrence or recurrence of the activities identified in the Order, or
- An increase in the frequency or seriousness of those activities after that time.

4.2 The nature of the anti-social behaviour with regard to dog controls covers activities that have taken place or are likely to take place that have

had or will have a detrimental effect on the quality of life of those in the locality.

4.3 S.18 of the Clean Neighbourhoods and Environment Act 2005 remains in force. It relates to litter offences and states: *A person is guilty of an offence if he throws down drops or otherwise deposits any litter in any place in the area of a principal litter authority which is open to the air to which the public has access with or without payment.*

- If we chose not to apply a Public Space Protection Order, we can be satisfied that we would be able to use this 2005 Act to address dropped poo bags but it is uncertain that s18 of the Act could also be relied on by the Council where a person failed to clean up after their dog.
- There is no other relevant legislation in place to address dogs on leads, or on leads by direction or dog exclusions.

4.4 The following options were considered:

- Withdraw the Public Space Protection Order from sites where there are relevant Town and Parish by laws in place.

Town and parish Councils have limited jurisdiction to tackle environmental crime and are permitted only to pursue enforcement action for littering, graffiti and fly posting. Towns and Parishes rely on the Borough Council for enforcement action to tackle dog related offences.

- Withdraw the Public Space Protection Order from all privately owned sites in favour of allowing landowners to manage dog related issues themselves.

This is a possible option on sites where landowners actively manage sites and wish to impose a restriction that is above the recognised standard for the site. Not applying a Public Space Protection Order in these circumstances makes the landowner directly responsible to the local community for a potentially controversial decision on levels of restriction.

Leaving a generic PSPO in place does not prevent a landowner imposing a higher local restriction on privately managed sites.

- Withdraw the Public Space Protection Order on the basis that the majority of dog owners act responsibly and there is no need for controls.

This may lead to the very small percentage of irresponsible dog owners allowing their dogs to run out of control and not picking up after them. There may also be a danger, as a consequence of such behaviour in one area, problems may escalate more generally. The level and nature of consultation feedback indicates that communities would find this unacceptable.

- Applying the recommendations as stated will reflect the majority view and reduce risk to a minimum.

5. Proposed Way Forward

5.1 To apply the Public Space Protection Order, attached at Appendix 1 as recommended based on evidence of need, following a data analysis of the consultation feedback and consideration of related complaints received (please see Appendix 2: West Devon feedback).

5.2 This will have a positive impact as described above, giving West Devon’s communities assurance that there is a robust mechanism in place to address dog related anti-social behaviour on lands within the Borough accessible to the public.

5.3 There will be a negative impact on communities and on the Borough Council’s reputation if the orders are not adequately enforced.

5.4 Mitigation lies in maintaining the enforcement team at full strength with competent Mobile Locality Officers and Environmental Protection Officers actively engaged in dog enforcement in the Borough.

6. Implications

Implications	Relevant to proposals Y	Details and proposed measures to address
Legal/Governance	Y	<p>Under the Anti-social Behaviour, Crime and Policing Act 2014 (chapter 2 Public spaces protection Orders) the Borough Council may make a Public Space Protection Order if satisfied on reasonable grounds that:</p> <ul style="list-style-type: none"> • 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 it is likely that activities will be carried on in a public place within that area and that they will have such an effect. Further, • the effect, or likely effect, of the activities is, or is likely to be of a persistent or continuing nature • the effect, or likely effect, of the activities is, or is likely to be, such as to make the activities unreasonable, and • the effect, or likely effect, of the activities justifies the restrictions imposed by the notice. <p>Any restrictions or prohibitions that are to be imposed must be both reasonable and aimed at preventing or reducing the risk of the detrimental</p>

		effect continuing. As indicated above, the decision to apply a Public Space Protection Order is discretionary but the consequence of not extending the current Public Space Protection Order may lead to the very small percentage of irresponsible dog owners allowing their dogs to run out of control and not picking up after them.
Financial implications to include reference to value for money	N	Public Space Protection Order enforcement is provided by the Localities team and is cost neutral with no additional revenue or capital expenditure, in as much as the cost of the service is met by the existing revenue budget and there is no budget pressure for implementation. There are no costs associated with advertising the Order.
Risk	Y	Applying the Public Space Protection Order requires the Borough Council to support them through enforcement. Poor enforcement performance will lead to customer dissatisfaction which will impact on the Borough Council's reputation. The Council will need to have due regard to its existing enforcement policy in terms of dealing with complaints of non-compliance with the Public Space Protection Order. The Council will have to monitor the resources required to ensure compliance with the Public Space Protection Order and consider this in any future review.
Supporting Corporate Strategy	Y	Environment and Wellbeing
Climate Change - Carbon / Biodiversity Impact	N	No direct carbon/biodiversity impact arising from the recommendations
Comprehensive Impact Assessment Implications		
Equality and Diversity	N	Registered blind and other relevant disabilities are exempt from the Orders.
Safeguarding	N	There are no Safeguarding implications

Community Safety, Crime and Disorder	Y	There is potentially a positive impact on levels of environmental crime.
Health, Safety and Wellbeing	Y	A clean environment promotes wellbeing
Other implications	Y	<p>Human Rights - In deciding whether to make a public space protection order and if so, what it should include, the Council must have particular regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the European Convention on Human Rights.</p> <p>Environmental Impact Assessment - An extension of the generic Public Space Protection Orders – Dog Control Articles will continue to be a positive effect on local environmental quality through continued enforcement against dog fouling.</p>

Supporting Information

Appendices:

Appendix 1: West Devon Borough Council Public Space Protection Order 2020

Appendix 2: West Devon feedback