



Cabinet

30 October 2019

Report of: Portfolio Holder for Environment
and Regulatory Services

PUBLIC SPACE PROTECTION ORDER APPROVAL

1.0	Corporate Priority	Decision Type:
1.1	PL4: Achieving a clean and attractive local environment	Key Decision

2.0	Summary:
2.1	To seek approval on the making of a Public Spaces Protection Order (PSPO) relating to dogs in accordance with the Anti-social Behaviour, Crime and Policing Act 2014 ("the Act").

3.0	Recommendations
3.1	That the Public Spaces Protection Order (PSPO) attached at Appendix 1 is approved to come into force 1st January 2020.
3.2	That the fee for the Fixed Penalty Notice (FPN) for PSPO offences be approved at £100.

4.0	Reason for Recommendation
4.1	The Council has approved corporate priorities as part of its Corporate Delivery Plan 2018-2020. One of the corporate priorities is 'achieving a clean and attractive local environment'. It was identified within the Corporate Delivery Plan that one way of meeting this priority is to undertake additional environmental enforcement, so we can more proactively tackle issues like litter, dog fouling and fly-tipping as we work to improve the quality and attractiveness of the Borough of Melton.
4.2	The Council receives a number of complaints about dog fouling and out of control dogs in public places each year. This includes direct and indirect contact from customers and Councillors being lobbied by residents. PSPOs are available to local authorities to deal with specific nuisance problems in particular areas that are, or are likely to, have a detrimental effect on the quality of life of people in the area.

5.0	Alternate Options Considered
5.1	Refuse the request to approve the PSPO: since the existing Dog Control Order (“DCO”) will be repealed in 2020, and the Council have no adopted DCOs this will leave the Council with no provision under which to enforce dog offences, e.g. fouling of land and it will likely not meet its Corporate Priorities.
5.2	Refuse the request to approve all articles included in the original proposed PSPO: Members are required to assess the evidence on the need for such orders and may decide that the evidence for some aspects is not sufficiently robust at this point in time, for example Article 5.0 – Direction to Move On and Disperse (where necessary) and/or Article 6.0 – Prohibition of Alcohol Consumption.

6.0	Report Detail
6.1	<p>The Council approved a Dog Control Order (DCO) on 31st December 2007 for the fouling of land by dogs and the removal of dog faeces.</p> <p>Dog fouling is unsightly and unpleasant and in turn can lead to serious illness in humans, such as Toxocariasis, from direct contact with the faeces on the ground which can also lead to blindness. Particular concern is raised in relation to children and sports users using parks and open spaces. The majority of dog owners are responsible, clean up after their dogs and keep them under control. However, a minority of irresponsible dog owners create significant problems.</p> <p>Each year the Council receives complaints in relation to dog fouling and out of control dogs in public places, which is a significant concern. The Council continues to receive a number of complaints in relation to dog fouling from local residents and Councillors.</p> <p>Public Space Protection Orders “PSPO” are available to Local Authorities to deal with specific nuisance problems in particular areas that are having, or are likely to have, a detrimental effect on the quality of life for those who live, work or play within the locality. A Public Space Protection Order (PSPO) bans specific acts in a designated geographical area. Councils were given the power to introduce them in October 2014 under the Anti-Social Behaviour, Crime and Policing Act 2014 (“the Act”).</p> <p>An order can prohibit or restrict certain activities and can be designed to ensure that the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour. The PSPO is different from other powers available under the Anti-Social Behaviour, Crime and Policing Act 2014 as they are led by the Council and concentrate on the identified problem behaviour. The final restrictions placed on a PSPO should be evidence based and shaped by the opinions of key stakeholders and the individuals who live, work or visit the public spaces.</p> <p>PSPO’s must identify a particular public place and either prohibit specified action or require specified action to be taken. Councils throughout the country have introduced them for acts such as banning alcohol consumption in the specified areas, banning groups of people gathering at specified places and requiring dog walkers to carry bags for disposal of faeces.</p>

6.2 The existing Dog Control Order (DCO) to deal with dog fouling will expire in 2020. The introduction of a PSPO is the method the Government has developed to be able to replace the DCO. It would be a proactive way of ensuring that we try and stop issues arising from dog fouling and have the ability to take enforcement action against those persons who do not pick up after their dog/s.

The Council can make a PSPO if it is reasonably satisfied that the following tests are met:

- that activities carried out in a public place within the Borough have either had a detrimental effect on the quality of life of those in the locality or it is likely that activities carried out will have such an effect;
- that the effect or likely effect of the activities is, or is likely to be of a persistent or continuing nature and;
- the effect is likely to be such as to make the activities unreasonable and justifies the restrictions imposed by the order.

6.3 The Council believes that there is evidence to satisfy the tests above. Evidence has been received from complaints received from the public and elected members, through social media, via local community groups (e.g. Melton Matters) and requests passed to the dog warden service. Consultation was carried out in July and August 2019 following approval by Cabinet in June 2019 resulted in 277 responses. This has demonstrated an overwhelming public support for the PSPOs (see Appendix 2).

In addition a residents survey of 5000 households carried out in the summer of 2019 has shown that almost half of respondents were dissatisfied with the enforcement action with regard to dog fouling and a similar number stated this service needed improving. In comparison to other responses, these two results demonstrated the highest levels of dissatisfaction. The full report will be published in due course.

Evidence was reviewed in relation to the draft proposal to include alcohol prohibition and direction to move on and disperse for groups gathering and it is proposed not to include these within the current Order. The Police have determined that they have some powers to deal with such issues by other means, and will evaluate these areas going forward for consideration when the PSPOs are reviewed in three years.

Following receipt of evidence and a consultation it is therefore proposed to consider introducing a PSPO which would cover the entire Borough and would require;

- Dog faeces to be removed
- Persons to produce a device or other means or removing dog faeces on demand
- Dogs to be put and kept on a lead when directed to do so by an authorised officer
- Dogs to be excluded from enclosed children play areas

The proposed PSPO is attached at Appendix 1.

6.4	<p>Members are required to make a decision whether it is proportionate and appropriate to grant the PSPO only once they had considered the following;</p> <ul style="list-style-type: none"> • the appropriate scope of the Order (see Appendix 1) • the area covered by the restrictions (see Appendix 1, Schedules 1) • the potential impact of the proposals • how each of the restrictions meet the legal test identified at 6.2 above.
6.5	<p>Members should do this by considering the evidence and the consultation responses attached at Appendices 2 and considering the information provided in 6.3 above.</p>
6.6	<p>Once a PSPO is adopted by the Council, sanctions are available for persons who breach certain prohibitions within the order. A breach of the order can be enforced initially by way of a simple fine under a fixed penalty notice. If this fine is not paid then the enforcement action can be escalated through criminal powers available by way of a prosecution through the Magistrates' Court. A maximum fine of level 3 or £1,000 may be imposed. Alternatively, the opportunity to pay a Fixed Penalty Notice (FPN) up to a maximum of £100 may be offered in place of prosecution and to avoid a criminal conviction.</p>
6.7	<p>The current fixed penalty notice for dog fouling is £75.00. The value of fines associated with fixed penalty notices is variable. It is proposed to increase the fixed penalty notice for the proposed PSPO to £100.00 in line with other Local Authorities.</p>

7.0	Consultation and Feedback (including Scrutiny Committee)
7.1	<p>By virtue of section 72 of the Act, before introducing a PSPO the Council has carried out consultation with the Chief Officer of Police, and the Police and Crime Commissioner, Parish Councils, the County Council as the highway authority, any community representatives considered necessary, and owners/occupiers of land covered within the Order (e.g. Town Estate). The consultation has been publicised widely through the Council's website, but also include, via press releases in local media, Facebook, e-mailing parish councils, community groups, the Kennel Club, and by leaving copies for public perusal in the Council Offices, Library and Police Station. If approved signs will be erected in areas the order specifies advising of the Council's Order.</p>
7.2	<p>The consultation exercise was carried out between the 1st July and 31 August 2019 and included 26 hours of face to face consultation in town supermarkets. In addition, both Melton Times and Leicester Mercury reported MBCs intention to make a PSPO for the Borough of Melton.</p>

8.0	Next Steps
8.1	<p>To make preparations for the introduction of the Public Space Protection Order including appropriate signage and communication.</p>

9.0	Financial Implications
9.1	If the PSPO is adopted, there will be a cost for signage (production and installation).
9.2	The Chief Executive will use delegated authority to fund any associated costs of implementing the Public Space Protection Order from the Corporate Priorities Reserve should sufficient savings not be identified elsewhere in the budget.
9.3	Melton Borough Council will provide a level of signage to meet the legal requirements for the legislation. The Council will be able to provide additional signage and should it be requested there will be a charge levied to the requesting Parish Councils or funded from the Special Expenses budget for Melton Mowbray.
10.0	Legal and Governance Implications
10.1	<p>Under the Anti-social Behaviour, Crime and Policing Act 2014, a Local Authority, after consultation with the public, Police, Crime Commissioner and other relevant bodies, are able to make a Public Spaces Protection Order (PSPO) if evidence of a nuisance exists.</p> <p>Under Section 59 of the Act, a Local Authority may make a PSPO if satisfied on reasonable grounds that two conditions are met. The first condition being:</p> <ul style="list-style-type: none"> 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. <p>The second condition being that the effect, or likely effect, of the activities:</p> <ul style="list-style-type: none"> 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. <p>A Public Spaces Protection Order identifies the public place referred to and sets out a number of conditions, such as;</p> <ul style="list-style-type: none"> a) prohibiting specified things being done in the area, b) requiring specified things to be done by persons carrying on specified activities in that area, or c) covering both of those prohibitions. <p>Prohibitions or requirements may be imposed if they are reasonable to impose through the order</p> <ul style="list-style-type: none"> a) to prevent the detrimental effect referred to from continuing, occurring or recurring, or b) to reduce the detrimental effect or to reduce the risk of its continuance, occurrence or recurrence. <p>An interested person may appeal to the High Court to question the validity of a PSPO, or a variation of an Order. An appeal must be made within the period of 6 weeks beginning with the date on which the Order or variation is made.</p>

Articles 10 and 11 of the Human Rights Act 1998 regarding freedom of expression and freedom of assembly and association have been considered and no issues have been identified.

The Council must satisfy its public sector equality duties under the Equality Act 2010 and at the same time as or following the outcome of consultation it will be necessary to undertake an Equality Impact Assessment to ensure that the Council has properly understood and assessed the potential impact of the proposed PSPO in terms of equality.

The enforcement of breaches of the order will be initially enforced through the use of a simple fine under a fixed penalty notice and then to criminal prosecution in the Magistrates' Court if not paid. It is expected that the issue of fixed penalties and the prosecution of cases will be income generating.

All decisions taken by or on behalf of the Council must

- (a) be within the legal powers of the Council;
- (b) comply with any procedural requirement imposed by law;
- (c) be within the powers of the body or person exercising powers on behalf of the Council;
- (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. standing orders and financial regulations;
- (e) be fully and properly informed;
- (f) be properly motivated;
- (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and
- (h) be reasonable and proper in all the circumstances.

11.0 **Equality and Safeguarding Implications**

11.1 The PSPO aims to ensure a consistent approach to anti-social behaviour offences in the District. It does not disproportionately affect any particular group and is relevant to all those on whom the law places a duty and on those whom the law protects. An Equalities Impact Assessment has been carried out to assess whether the proposed PSPO will have disparate impact on groups with protected characteristics. This process will help the Council to establish any potential negative impacts and consider how to mitigate against these. This exercise will also help to ensure transparency. The Equalities Impact Assessment can be provided on request.

12.0 **Community Safety Implications**

12.1 Adoption of PSPOs should have a positive impact on Community Safety

13.0 **Other Implications**

13.1 The PSPO is seeking to address issues which affect the quality of life and public safety. These issues can affect both the physical and mental well-being of residents and therefore these proposals would have a significant impact on community well-being.

14.0 Risk & Mitigation:

14.1 There are inherent risks associated with taking any enforcement actions. The adoption of a PSPO will reduce those risks.

L I K E L I H O O D	A	Very High				
	B	High				
	C	Significant		1, 2		
	D	Low				
	E	Very Low				
	F	Almost Impossible				
			Negligible 1	Marginal 2	Critical 3	Catastrophic 4

IMPACT

Risk No	Risk Description
1	Failure to adopt a PSPO would leave us with no powers to deal with dog fouling.
2	Failure to go through due process and consultation could lead to a legal challenge on the validity of the PSPO

Background Papers:


Anti Social Behaviour, Crime and Policing Act 2014
 Public Space Protection Orders- Guidance for Councils
 MBC Cabinet - 5th June 2019 Paper 6 – Proposed Public Space Protection Order

Appendices

Appendix 1 – Proposed PSPO
 Appendix 2 – PSPO Public Consultation Results 2019

Report Timeline:	Date of sign-off:
Equalities Check & Challenge	15.10.19
Director Approval	16.10.19
Legal Approval	09.10.19
Finance Approval	02.10.19
Deputy Chief Finance Officer Sign Off	02.10.19
Deputy Monitoring Officer Sign Off	09.10.19

Date of Review to make public
N/A as public document

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