

Report to: Cabinet



Date of Meeting 4 January 2023

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

Approval on the proposals to vary and discharge the Public Spaces Protection Orders 2023

Report summary:

To seek approval of the proposals to vary and discharge three Public Spaces Protection Orders: Dog Control, Seashores & Promenades, and Control of Anti-Social Behaviour & the Consumption of Intoxicating Substances in Exmouth and Sidmouth

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

1. To discharge the Public Spaces Protection Orders 2019 as required by the provisions within the Anti-Social Behaviour Crime and Policing Act 2014.
2. To approve the amendments and variations to the East Devon Public Spaces Protection Orders 2023 as attached to this report.

Reason for recommendation:

In order to clarify and simplify the current PSPO's and allow a targeted approach to dog control and anti-social behaviour within the district.

Officer: Sally Webster, PEHO, Environmental Protection, swebster@eastdevon.gov.uk

Portfolio(s) (check which apply):

- Climate Action and Emergency Response
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Democracy, Transparency and Communications
- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities
- Tourism, Sports, Leisure and Culture

Equalities impact: Medium Impact

The need for appropriate dog controls throughout the district is necessary in order to encourage responsible dog ownership because problems with poorly controlled dogs can impact on other members of the public using open spaces.

The need to manage anti-social behaviour impacting on members of the public whilst balancing the needs of particular groups such as the homeless, so the PSPO does not disadvantage them in accessing resources.

Climate change: Low Impact

Risk: Low Risk.; The consultation is a requirement of the Act and is necessary in order to create the required orders. Failure to complete this process will mean that previously held powers will be removed when the current PSPOs reach three years. There is a risk that any decisions made can be formally challenged.

Links to background information Anti-Social Behaviour Crime and Policing Act 2014

<http://www.legislation.gov.uk/ukpga/2014/12/contents/enacted/data.htm> Home Office Statutory

Guidance on the Act July 2014

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final_2_.pdf

Link to Council Plan

Priorities (check which apply)

- Better homes and communities for all
- A greener East Devon
- A resilient economy

Report in full

1. A Public Space Protection Order (PSPO) is a tool under the Anti-Social Behaviour, Crime and Policing Act 2014 which is intended to deal with a particular nuisance or problem affecting a specified area that is detrimental to the local community's way of life. They could be used for a wide range of problems. The area may be as small as a play park or as large as the district of the local authority as a whole.
2. A PSPO can be made by the council if it is satisfied on reasonable grounds that the activities carried out, or likely to be carried out, in a public space:
 - Have had, or are likely to have, a detrimental effect on the quality of life of those in the locality;

And that the effect or likely effect of the activities:

- Is or is likely to be persistent or continuing in nature;
 - Is or is likely to be unreasonable and
 - Justifies the restrictions imposed.
3. Byelaws are local laws which can be introduced by the Council to implement requirements in a specified area. Sanctions for contravention of a byelaw would be through conviction in a magistrate's court. A Public Space Protection Order is preferable to control certain anti-social behaviour as contravention can be dealt with more efficiently by issuing a fixed penalty notice (a civil sanction) instead of or prior to, prosecution in a magistrates court. In addition, a Public Space Protection Order is in place for maximum of three years before review and so can be amended to respond to specific local issues.

4. Existing dog controls were transferred from Dog Control Orders into Public Spaces Protection Orders in 2017; this was a requirement on local Councils.
5. PSPOs may be used to control a range of activities where there is evidence of detriment. As previously noted PSPOs are time limited to three years. The current East Devon PSPOs are due to expire in May 2023 so we have carried out a review of and consultation on the existing orders, assessing if they are still likely to be required and proposed amendments where considered appropriate.
6. The current PSPO covers:
 - Control of Dogs – continuing the existing whole district requirements to clear up after dogs, keep dogs on leads in specified places and designate some areas where dogs are not allowed, to walk no more than six dogs at any one time, and a requirement for dog(s) to be kept on a lead when asked by an authorised officer.
 - Seashores and Promenades – to amend the seasonal dog exclusions, update dog on lead areas and to continue to prohibit the feeding of seagulls on the town beaches and promenades.

A table of proposed changes with justifications is included in Appendix 1. The recommended changes have been proposed following internal consultation with relevant Council teams and Council members and external public consultation. Some key points that underpin the consultation process are:

- It was proposed in the public consultation to remove the requirement to keep dogs on leads whilst on or adjacent to the highway as it could be considered that a targeted approach is more suitable to deal with irresponsible dog owners and there are other powers available under the ASB, Crime and Policing Act 2014 to address this issue.
- The Council has received a number of requests from dog walkers to be allowed to exercise their dogs on the beaches in the summer during the early morning or later evening when the beaches are cooler and quieter for residents and people visiting the area to exercise their dogs
- Analysis of complaints received concerning dogs on the exclusion areas indicate that the majority of the complaints relate to a breach of the current PSPO rather than specific anti-social behaviour caused by the dog owners, such as fouling or nuisance behaviour of the dogs.
- Time limits apply on beaches within Cornwall and feedback from Cornwall Council has indicated that they received fewer complaints concerning dog nuisance and fouling on the beaches and dogs being on the beach during the banned times. They also commented that they were able to target their limited resources in hot spot areas based on local intelligence and this enabled more successful enforcement. Many of Cornwall's beaches are also dog accessible all year round, whilst EDDC are still proposing to retain dog ban areas on all of our beaches during May to Sept.
- Dorset Council are another local council who have also relaxed dog controls on some of their beaches from January 2021 and they now have seasonal exclusions on some beaches and others are dog accessible all year round, enabling residents and visitors to use the beaches as appropriate to their needs.
- The Environmental Protection Team have undertaken patrols of the beaches this summer, providing information and education to those found in the dog exclusion areas and the majority of those spoken to and asked to leave the beaches were found to be local residents who were fully aware of the restrictions. Any changes to the PSPO will be disseminated to the public and signage will be reviewed before May 2023 and we will robustly enforce the PSPO with the use of Fixed Penalty Notices to reinforce the requirements.

It should be noted that consideration is being given to the introduction of a further PSPO in relation to the banning of BBQ's and fires on the beaches and other Council owned land. This PSPO will be separate to the PSPOs being considered during this review period and a separate Cabinet report will be presented by Streetscene who are leading on this PSPO. Consideration may also be given to the use of Chinese Lanterns on beaches during the consultation of the new PSPO.

With regard to the possible introduction of a PSPO in respect of the slipway access and parking issues at Imperial Recreation Ground, it has been noted that the issues are predominately around the impact of cars on the SSSI and Special Protection area for wildlife (damage to substrate, leaching oil). The Home Office Guidance relating to PSPOs emphasises that this tool should be used to reduce impact of anti-social behaviour on communities and individuals, rather than wildlife as appears to be currently the case. In order to proceed with a PSPO the Council would have to be satisfied that it met the test that the behaviour is unreasonable, persistent, and justifies the restrictions. Further consideration will also need to be given to which council officers would be responsible for the enforcement of such a PSPO. It is therefore not considered appropriate to pursue a PSPO in respect of this issue within this review period but if further evidence is produced detailing the effects on the community, it can be reconsidered in the future.

7. The PSPOs will remain in force for 3 years at which point they will be reviewed, amended and renewed as appropriate.
8. A person observed not to be complying with the PSPO is liable to receive a fixed penalty notice, which can be up to £100, but has been set at £80 which was the same as the previous dog control orders. However, it is proposed to increase this to £100 to bring EDDC enforcement in line with neighbouring councils. A number of council officers and police officers are authorised to enforce the requirements of the orders.
9. There is a requirement in the legislation for interested parties to be consulted about the proposals. Consultees included all district councillors, town and parish councils, affected landowners, Devon County Council, Devon and Cornwall Police and the Police and Crime Commissioner. There was a press release drawing attention to the web-based consultation, with paper copies available on request. There was also the opportunity for members of the public to comment, in writing, by emailing pspoconsultation@eastdevon.gov.uk or by post to Environmental Health.
10. The consultation period was 10th October to 20th Nov 2022 and the Council received a total number of 639 representations from the public, Parish and Town Councils and other interested bodies.
11. Use this link to the current PSPO's , [Public Spaces Protection Orders - Dog control, seashore and promenades public spaces protection orders \(PSPOs\) - East Devon](#)
12. In addition to the email responses received, a petition was received from a resident, in which they had asked people whether they were in favour of the change in the current PSPO to allow dogs on the beaches before 09:00 and after 18:00. There were a 123 responses, of those 11 were duplicated, in that those individuals had already made comment via email so these have been discounted from the petition. 108 people signed the petition in favour of the changes to the timings of the dog exclusion on beaches and 4 people signed the petition against the changes.

Changes to The Control of Anti-Social Behaviour & the Consumption of Intoxicating Substances in Exmouth and Sidmouth PSPO.

13. This order relates to a number of designated streets in Exmouth and Sidmouth where certain controls have been needed at the request of Devon and Cornwall Police in order to enable them to manage behaviours. The streets included are those where there have been particular problems in past years. Although only low numbers of fixed penalty notices have been served under this order since its introduction in 2017, the ability to use the power to move individuals on and remove containers of alcohol is implemented weekly by the police. The businesses from the local area of the Strand, Exmouth ring on a weekly basis to report street drinking and anti-social behaviour during warmer weather, which the police respond to and deal with. The PSPOs are already in existence in a number of central streets in Exmouth and the variation which extended it in 2021 to cover the area linked to the beach, this allows authorised officers to deal with individuals by way of fixed penalty notices for:

- i. Possessing intoxicating substance including alcohol.
- ii. Urination and defecation within a street or public place.
- iii. Aggressive requests for money.
- iv. Anti-Social Behaviour causing Intimidation, harassment, alarm or distress.

14. The PSPO in Sidmouth was created to deal with the issues around the streets linked to The Night club and Pubs which formed the Evening and Night time economy for the locality and allowed authorised officers to deal with individuals by way of fixed penalty notices for:

- i. Possessing intoxicating substance including alcohol.

15. The PSPOs will remain in force for 3 years at which point they will be reviewed, amended and renewed as appropriate.

16. A person observed not to be complying with the PSPO is liable to receive a fixed penalty notice which can be up to £100 but has set at £80. However, it is proposed to increase this to £100 to bring EDDC enforcement in line with neighbouring councils. A number of council officers and police officers are authorised to enforce the requirements of the orders.

17. There is a requirement in the legislation for interested parties to be consulted about the proposals. Consultees included all district councillors, town and parish councils, affected landowners, Devon County Council, Devon and Cornwall Police and the Police and Crime Commissioner. There was a press release drawing attention to the web based consultation, with paper copies available on request, and there was also be an opportunity for members of the public to comment by emailing or writing to the Environmental Health team.

18. The consultation period was between 10th October to 20th November 2022.

19. A table of Proposed Changes and Consultation Responses and Recommendation are shown in Appendix 1.

20. In addition to the original proposals, other issues were raised through the consultation process. These are shown in Appendix 2 with associated recommendations.

21. Timetable

w/c 10/10 – 20/11	Public Consultation period
w/c 21/11 – 10/12	Review of Public Consultation responses
	Legal Services instructed to review drafts and amend as necessary
12/12	Report to Democratic Services for inclusion into Cabinet meeting on 4/1
22/2/23	Full Council meeting to ratify and sign off final PSPO's Legal Services instructed to seal and sign PSPOs
5/23	Implementation of amended PSPOs

Financial implications:

There are no identifiable financial implications, however should there be Financial resource requirements then these would be funded from the individual Service budgets.

Legal implications:

The minor changes and variations proposed in the renewal of the PSPOs are acceptable within the provisions of s59 of the ASB Crime and Policing Act 2014, and require no further comment at this stage.

Appendix 2. Additional Requests for other areas to be included in the Dog Control PSPO

Request	Recommendation
All Hallows Playing Fields – requests from the public to have a dog exclusion for the playing fields to reduce dog fouling, particularly on the rugby pitches.	Recommend this is approved
Kilmington Playing Fields request: No dogs in the Play Area and Dogs on Leads for the field area to reduce dog fouling in these areas,	Recommend this is approved
Axe Yacht Club request the Boat and Carpark area is considered for Dogs on Leads restricted.	Recommend this is approved