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STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL

CABINET DELEGATED DECISIONS

Tuesday, 12 September 2023

PUBLIC SPACE PROTECTION ORDER EXTENSION

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STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL

Cabinet Delegated Decision

12 September 2023

TITLE:	Public Space Protection Order Extension
PORTFOLIO HOLDER:	Councillor Nigel Yates, Portfolio Holder for Climate Change and Environment
CONTACT OFFICER:	David Smith – Head of Communities, Culture and Climate Change
WARDS INVOLVED:	(All Wards)

Appendices Attached – Draft Public Spaces Protection Order

1. Reason for the Report

1.1 Staffordshire Moorlands is currently covered by a Public Spaces Protection Order (PSPO) which came into force on 19th October 2020.

1.2 A person is in breach of the current Order if:

- i. A dog defecates at any time on land described in Schedule 1 and he/she fails to remove the faeces from the land forthwith.
- ii. He/she does not comply with a direction given him/her by an Authorised Officer of the Authority to put and keep the dog on a lead of not more than four feet in length when on land described in Schedule 1.
- iii. He/she enters any land described in Schedule 2 and does not keep the dog on a lead of not more than four feet in length.
- iv. He/she takes the dog onto or permits the dog to enter or remain on any land described in Schedule 3.
- v. An Authorised Officer of the Authority has reason to believe that a person has committed an offence under this Order and the person: (a) fails to give his/her name and address when asked to do so, or (b) gives a false or inaccurate name or address.

1.3 The Orders will cease to have effect on 20th October 2023 and thus need to be extended or replaced if the Council wishes to continue to have the power to take action in respect of dog fouling and nuisance behaviour.

2. **Recommendation**

2.1 The Portfolio Holder is recommended to:

1. Agree to carry out the statutorily required public consultation and notification on the draft Order appended to this report;
2. Subsequently approve the draft Order by Delegated Decision unless the responses from the consultation necessitate material changes to the draft Order.

3. **Executive Summary**

3.1 The current PSPO comprises of five prohibitions and applies to land specified in the Order.

3.2 The first prohibition makes it an offence in circumstances where a dog defecates at any time on land described in Schedule 1 and the person in charge of the dog fails to remove the faeces from the land forthwith.

3.3 The second prohibition makes it an offence when a person who is in charge of a dog does not comply with a direction given him/her by an Authorised Officer of the Authority to put and keep the dog on a lead of not more than four feet in length when on land described in Schedule 1.

3.4 The third prohibition makes it an offence when a person in charge of a dog enters any land described in Schedule 2 and does not keep the dog on a lead of not more than four feet in length..

3.5 The fourth prohibition makes it an offence if a person takes the dog onto or permits the dog to enter or remain on any land described in Schedule 3.

3.6 The fifth prohibition is made in two parts. The basis for both parts is in circumstances where an Authorised Officer of the Authority has reason to believe that a person has committed an offence under this Order and (a) the person fails to give his name and address when asked to do so, or (b) gives a false or inaccurate name or address.

3.7 Schedule 1 of the Order applies to - all land within the area of Staffordshire Moorlands District Council that is open to the air and to which the public are entitled or permitted to have access (with or without payment) including access land as defined in section 1 of the Countryside and Rights of Way Act 2000. This includes, but is not limited to all footpaths, the footways and carriageways of every highway (including tree bases and grass verges) and every cemetery, park, public garden and open space including land owned by parish and town councils.

3.8 Schedule 2 of the Order applies to - Leek Cemetery; Buxton Road Cemetery; Birch Gardens, Buxton Road, Leek; Ball Haye Gardens, Park Road, Leek; Brown Edge Lawn Cemetery; Boardmans Bank, Brown Edge; St Peter's Church, Caverswall; Checkley Parish Cemetery, Hollington Road, Tean;

Cotton Parish Cemetery, Cotton Lane, Cotton; Ipstones Cemetery, Ipstones; Kingsley Parish Cemetery High Street, Kingsley; Onecote Parish Cemetery, Douse Lane, Onecote; Church of St. Mary and St. Lawrence, Waterhouses.

- 3.9 Schedule 3 of the Order applies to - any fenced children`s play area owned by Staffordshire Moorlands District Council; Alton Village Hall Playing Field, Hurstons Lane, Alton; Bagnall Playing Field, off Clewlovs Bank, Bagnall; High Lane Playing Field, Brown Edge; Tean Road Recreation Ground, Tean Road, Cheadle; Churchill Road Recreation Ground, Cheadle; Kenilworth Walk, Cheadle; Tean Recreation Ground, High Street, Tean; Checkley Play Area, Checkley Community Centre, off Uttoxeter Road, Checkley; Cauldon Low Recreation Ground, Moorfields Close, Cauldon Lowe; Station Road Playing Fields, Endon; Foxt Children's Play Area, Foxt; Blythe Bridge Recreation Ground, The Avenue, Blythe Bridge; Ball Haye Green Recreation Ground, Leek; Waterhouses Play Area, adjacent to the school fields, Waterhouses; Meigh Road Playing Fields, Werrington. And the following cemetery and church yards/burial grounds: St John's, Alton; Biddulph Town Burial Ground, Congleton Road, Biddulph; Cheadle Cemetery, St Giles; The Abbot Churchyard, Park Lane, Cheadle; Endon with Stanley Parish Council Cemetery, St Luke's Church, Endon; Forsbrook Parish Cemetery, Cheadle Road, Forsbrook.
- 3.10 The Council must carry out consultation before making or extending an Order. Where an order is discharged, a notice identifying the order and stating the date when it ceases to have effect must be published in accordance with regulations made by the Secretary of State.

4. How this report links to Corporate Priorities

- 4.1 The report supports the corporate priority of 'Supporting our communities to create a healthier, safer, cleaner Staffordshire Moorlands'.

5. Alternative Options

- 5.1 The Council could choose to extend the current Order.
- 5.2 Alternatively, the Council could choose to not replace the current Order when it expires and no longer take enforcement action in respect of dog fouling.

6. Implications

6.1 Community Safety - (Crime and Disorder Act 1998)

The introduction of the Order would assist in preventing nuisance and environmental crime (dog fouling).

6.2 Workforce

None – the current officers already enforce under the existing Orders.

6.3 Equality and Diversity/Equality Impact Assessment

It is recognised that some groups may find it difficult to comply with the Order and hence exemptions are provided for people who are (i) registered blind or (ii) have a disability that affects their mobility, manual dexterity, physical coordination or ability to lift, carry or otherwise move everyday objects, in respect of a dog trained by a prescribed charity and upon which they rely for assistance.

6.4 Financial Considerations

None, enforcement of the Orders would be delivered within current budgets.

6.5 Legal

Section 72 of the Anti-Social Behaviour, Crime and Policing Act 2014 sets out the requirements for consultation. A PSPO can be made if, on reasonable grounds, the local authority is satisfied that the required conditions are met. The PSPOs can last for up to three years once approved and can be varied or extended more than once.

6.6 Sustainability

None.

6.7 Consultation

Under section 72 of the Anti-social Behaviour, Crime and Policing Act 2014, the Council is required to carry out “necessary” consultation, publicity and notification prior to introducing (or extending) an Order.

Necessary consultation means consulting with:

- (a) the chief officer of police, and the local policing body, for the police area that includes the restricted area;
- (b) whatever community representatives the local authority thinks it appropriate to consult; and
- (c) the owner or occupier of land within the restricted area.

Necessary publicity means publishing the text of the proposed Order.

Necessary notification means notifying any parish or community councils, and the County Council.

The requirement to consult with the owner or occupier of land within the restricted area does not apply to land that is owned and occupied by the local authority; and applies only to the extent that it is reasonably practicable to consult the owner or occupier of the land.

6.8 Risk Assessment

None.

Neil Rodgers
Executive Director (Place)

Web Links and Background Papers

www.staffsmoorlands.gov.uk/pspo

Contact details

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7. **Detail**

- 7.1 Dog fouling is an issue that is often a concern for the public. Unlike littering, which is an offence under the Environmental Protection Act 1990, there is no specific offence of failing to remove dog faeces. Instead, local authorities are required to introduce specific Orders to address the problem.
- 7.2 The Council introduced four Dog Control Orders in October 2011 utilising powers available in the Clean Neighbourhoods and Environment Act (CNEA) 2005:
- The Fouling of Land by Dogs (Staffordshire Moorlands District Council) Order 2011;
 - The Dogs on Leads by Direction (Staffordshire Moorlands District Council) Order 2011.
 - The Dogs on a Lead (Staffordshire Moorlands District Council) Order 2011; and
 - The Dog Exclusion (Staffordshire Moorlands District Council) Order 2011.
- 7.3 The latter two Orders were subsequently amended in 2014 to alter their geographic coverage.
- 7.4 The first of these Orders made it an offence if the person in charge of a dog at the relevant time does not remove faeces forthwith if the dog defecates. The second makes it an offence if a person in charge of a dog does not comply with a direction from an authorised officer of the Council to put and keep the dog on a lead of not more than six feet in length. An officer can only give such a direction if such restraint is reasonably necessary to prevent a nuisance or behaviour by the dog is likely to cause annoyance or disturbance to any other person or the worrying or disturbance of any animal or bird.
- 7.5 The Dogs on a Lead Order required dogs to be kept on leads in specified areas, whilst the Dog Exclusion Order prevents dogs from entering specified areas.

- 7.6 Under the CNEA, it was an offence if someone did not provide their name and address when requested to do so by an officer.
- 7.7 The above orders became ineffective in 2020 following the council's decision to implement the current Public Space Protection Order.
- 7.8 The power to introduce Dog Control Orders was subsequently repealed by the Anti-social Behaviour, Crime and Policing Act ("ASB Act") 2014. The ASB Act introduced Public Space Protection Orders (PSPOs), which could be used to introduce the same requirements and prohibitions as available through Dog Control Orders but which also had a broader application. The ASB Act does not, however, make failure to provide a name and address when asked to do so by an officer in relation to a breach of an Order an offence. PSPOs last for three years but can be renewed.
- 7.9 The current PSPO has proved to be effective in most situations; however; the Order expires on 20th October 2023 and, thereafter, its prohibitions will have no effect and the Council will have no enforcement powers available to address dog fouling and other relevant dog control measures.
- 7.10 A revised PSPO has been drafted (Appendix A) that reflects the provisions of the current PSPO with a three year extension.
- 7.11 Where a local authority wishes to extend the period for which a PSPO has effect, or to vary an Order, Section 72 of the ASB Act imposes certain requirements in relation to consultation and notification, namely to consult: (i) the Chief Officer of Police and the Local Policing Body for the area; (ii) whatever community representatives the local authority thinks it appropriate to consult and to notify: (i) the parish, town or community council for the area (ii) the County Council for the area if the authority is a district council..
- 7.12 The Council proposes to consult with the Chief Constable of Staffordshire Police, the Office of the Police, Fire and Rescue and Crime Commissioner; and with community representatives and land owners/occupiers by issuing a press release, placing details of the consultation on the Council's website, and promoting on social media.
- 7.13 The Council will publish the text of the draft Order on its website.
- 7.14 The Council will also notify each Parish and Town Council within the District, and the County Council.
- 7.15 A notice stating the date on which the Orders will cease to have effect will be published in accordance with regulations made by the Secretary of State.

PUBLIC SPACES PROTECTION ORDER (Dog Fouling and Nuisance) 2023

The Staffordshire Moorlands District Council (the Council) in exercise of the power under section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 (the Act), being satisfied that the conditions set out in section 59 of the Act have been met, makes the following order:

1. This Order comes into force on **(insert date)** and will last for a period of three years.
2. This Order applies to the land specified in the Schedule.

Purpose

3. This order is intended to help stop or reduce the detrimental effect on the quality of life of those in the locality caused by (i) failure to remove dog faeces from land and (ii) nuisance behaviour caused by dogs in public areas.

Prohibitions

4. A person shall be in breach of this Order if:
 - 4.1 A dog defecates at any time on land described in Schedule 1 and he/she fails to remove the faeces from the land forthwith.
 - 4.2 He/she does not comply with a direction given him/her by an Authorised Officer of the Authority to put and keep the dog on a lead of not more than four feet in length when on land described in Schedule 1.
 - 4.3 He/she enters any land described in Schedule 2 and does not keep the dog on a lead of not more than four feet in length.
 - 4.4 He/she takes the dog onto or permits the dog to enter or remain on any land described in Schedule
 - 4.5 An Authorised Officer of the Authority has reason to believe that a person has committed an offence under this Order and the person:
 - (a) fails to give his name and address when asked to do so, or
 - (b) gives a false or inaccurate name or address.

Offence of Failing to Comply with Order

- 5.1 Under section 67 of the Anti-social Behaviour, Crime and Policing Act 2014, it is an offence for a person without reasonable excuse to:
- (a) do anything that the person is prohibited from doing by this Order, or
 - (b) fail to comply with a requirement to which the person is subject under this Order.
- 5.2 A person does not commit an offence under this Order by failing to comply with a prohibition or requirement if:
- (a) he is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948;
 - (b) he has a disability which affects his mobility, manual dexterity, physical coordination or ability to lift, carry or otherwise move everyday objects, in respect of a dog trained by a prescribed charity and upon which he relies for assistance;
 - (c) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so; or
 - (d) the local authority did not have power to include the prohibition or requirement in this Order.
- 5.3 A person guilty of an offence of failing to comply with this Order is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Challenging the Validity of the Order

6. An Interested Person may apply to the High Court to question the validity of the Order on the grounds that the Council has no power to make the Order, include the particular prohibitions or requirements imposed by the Order, or that a requirement of the Act has not been complied with within six weeks beginning with the date on which the order is made.

Interpretation

7. For the purpose of this Order:
- (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:
 - (i) at that time some other person is in charge of the dog; or
 - (ii) the person is under the age of 16, in which case the Parent of that person shall be treated as being in charge of the dog at the relevant time;
 - (b) placing the faeces in a receptacle on the land which is provided for the purpose, or for the disposal of waste, shall be a sufficient removal from the land;
 - (c) being unaware of the defecation (whether by reason of not being in the vicinity or otherwise), or not having a device for or other suitable means of removing the faeces shall not be a reasonable excuse for failing to remove the faeces;
 - (d) each of the following is a “prescribed charity”:-
 - (i) Dogs for the Disabled (registered charity number 700454);

- (ii) Support Dogs (registered charity number 1088281);
- (iii) Canine Partners for Independence (registered charity number 803680);
- (e) an Authorised Officer of the Authority may only give a direction under this Order to put and keep a dog on a lead if such restraint is reasonably necessary to prevent a nuisance or behaviour by the dog is likely to cause annoyance or disturbance to any other person or the worrying or disturbance of any animal or bird.
- (f) an Authorised Officer of the Authority means an employee, partner agency or contractor of Staffordshire Moorlands District Council who is authorised in writing by Staffordshire Moorlands District Council for the purposes of administering the requirements of this Order.
- (g) Parent, in relation to a person under the age of 16, includes any person:
 - (i) who is not a parent of his but who has parental responsibility for him, or
 - (ii) who has care of him.
- (h) Interested Person means an individual who lives in the restricted area or who regularly works in or visits that area.

IN WITNESS whereof the COMMON SEAL
STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL was hereunto affixed this
day of two thousand and twenty in
the presence of

Chairman

Chief Executive

SCHEDULE 1

All land within the area of Staffordshire Moorlands District Council that is open to the air and to which the public are entitled or permitted to have access (with or without payment) including access land as defined in section 1 of the Countryside and Rights of Way Act 2000. This includes, but is not limited to all footpaths, the footways and carriageways of every highway (including tree bases and grass verges) and every cemetery, park, public garden and open space including land owned by parish and town councils.

SCHEDULE 2

Leek Cemetery; Buxton Road Cemetery; Birch Gardens, Buxton Road, Leek; Ball Haye Gardens, Park Road, Leek; Brown Edge Lawn Cemetery; Boardmans Bank, Brown Edge; St Peter's Church, Caverswall; Checkley Parish Cemetery, Hollington Road, Tean; Cotton Parish Cemetery, Cotton Lane, Cotton; Ipstones Cemetery, Ipstones; Kingsley Parish Cemetery High Street, Kingsley; Onecote Parish Cemetery, Douse Lane, Onecote; Church of St. Mary and St. Lawrence, Waterhouses.

SCHEDULE 3

Any fenced childrens play area owned by Staffordshire Moorlands District Council; Alton Village Hall Playing Field, Hurstons Lane, Alton; Bagnall Playing Field, off Clewlovs Bank, Bagnall; High Lane Playing Field, Brown Edge; Tean Road Recreation Ground, Tean Road, Cheadle; Churchill Road Recreation Ground, Cheadle; Kenilworth Walk, Cheadle; Tean Recreation Ground, High Street, Tean; Checkley Play Area, Checkley Community Centre, off Uttoxeter Road, Checkley; Cauldon Low Recreation Ground, Moorfields Close, Cauldon Lowe; Station Road Playing Fields, Endon; Foxt Children's Play Area, Foxt; Blythe Bridge Recreation Ground, The Avenue, Blythe Bridge; Ball Haye Green Recreation Ground, Leek; Waterhouses Play Area, adjacent to the school fields, Waterhouses; Meigh Road Playing Fields, Werrington.

The following cemetery and church yards/burial grounds:

St John's, Alton; Biddulph Town Burial Ground, Congleton Road, Biddulph; Cheadle Cemetery, St Giles; The Abbot Churchyard, Park Lane, Cheadle; Endon with Stanley Parish Council Cemetery, St Luke's Church, Endon; Forsbrook Parish Cemetery, Cheadle Road, Forsbrook.