

**STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL**

**Community Overview & Scrutiny Panel**

**3 February 2020**

<b>TITLE:</b>	<b>Dog Fouling Order</b>
<b>PORTFOLIO HOLDER:</b>	<b>Councillor Scalise- Portfolio Holder for Environment</b>
<b>CONTACT OFFICER:</b>	<b>David Smith - Principal Officer Communities &amp; Partnerships</b>
<b>WARDS INVOLVED:</b>	<b>(All Wards)</b>

**Appendices Attached – Draft Public Spaces Protection Order**

**1. Reason for the Report**

- 1.1 Staffordshire Moorlands is currently covered by four Orders which make it an offence if a person in charge of a dog at the relevant time does not:
- i. remove dog faeces forthwith if the dog defecates;
  - ii. put and keep a dog on a lead if required to do so by a Council Officer to prevent the dog causing annoyance or disturbance to any other person or the worrying or disturbance of any animal or bird;
  - iii. keep a dog on a lead in specified areas;
  - iv. stop a dog from entering specified areas.
- 1.2 The Orders will cease to have effect on 20<sup>th</sup> October 2020 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 Panel recommends Cabinet:
1. Agrees to carry out public consultation on the draft Order appended to this report;
  2. Subsequently approves the draft Order by Delegated Decision unless the responses from the consultation necessitate material changes to the draft Order;

3. In the event of a new order being approved prior to 20<sup>th</sup> October 2020, formal notice of discharge of the existing Orders should be published simultaneously with the introduction of the replacement Order.

### **3. Executive Summary**

- 3.1 There are currently four Orders covering the District which make it an offence if a person in charge of a dog at the relevant time does not:
  - i. remove dog faeces forthwith if the dog defecates;
  - ii. put and keep a dog on a lead if required to do so by a Council Officer to prevent the dog causing annoyance or disturbance to any other person or the worrying or disturbance of any animal or bird;
  - iii. keep a dog on a lead in specified areas;
  - iv. stop a dog from entering specified areas.
- 3.2 The latter two orders (Dogs on a Lead Order and Dog Exclusion Order) have not been used since their introduction in 2011. It is proposed that these Orders be allowed to expire in October 2017.
- 3.3 No formal action has been taken under the Order which requires a dog owner to put their dog on a lead when required to do so by an officer. However, this Order has proved to be useful in certain circumstances and provides Enforcement Officers and Horticultural Officers with the formal power to require dogs to be put and kept on a lead. It is, therefore, suggested that this power be retained.
- 3.4 If the Order prohibiting dog fouling is not replaced then the Council could not take any formal action to prevent dog fouling in the District. It is, therefore, recommended that this power also be retained.
- 3.5 A revised Order is presented as an Appendix to this report. The draft Order addresses two issues that have been identified with the current Orders by:
  - Making it a further breach of the Order if an offender does not provide their details; and
  - Specifying that the responsibility for the breach rests with the parent/carer where the person in actual control of the dog at the time of the breach is under 16.
- 3.6 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 Orders in the current format. However, this would not provide an opportunity to (i) address the issue of failure of those under the age of 16 to remove faeces, or (ii) make it an offence for a suspected offender to fail to provide an Authorised Officer with their correct name and address.
- 5.2 The Council could choose to extend/replace the Dog Exclusion and Dogs on a Lead Orders but it would be difficult to demonstrate the need to do so given that the powers have not been used.
- 5.3 Alternatively, the Council could choose to not replace the current Orders when they expire 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

The draft Order has been reviewed by Legal Services.

### 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.

Mark Trillo

**Cabinet Director (People) and Monitoring Officer**

### **Web Links and Background Papers**

[www.staffsmoorlands.gov.uk/pspo](http://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 makes 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 requires 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 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.
- 7.8 Under the ASB Act, any pre-existing Dog Control Order continued to have effect for a further three years before automatically converting by operation of law to a PSPO. PSPOs have effect for a period of three years, which means that Staffordshire Moorlands District Council’s current Orders continue to apply until 20<sup>th</sup> October 2020.
- 7.9 The Dogs on a Lead Order and The Dog Exclusion Order have not been used since their introduction in 2011. It is proposed that these Orders be allowed to expire in October 2017.
- 7.10 No formal action has been taken under the Order which requires a dog owner to put their dog on a lead when required to do so by an officer. However, this Order has proved to be useful in certain circumstances and provides Enforcement Officers and Horticultural Officers with the formal power to require dogs to be put and kept on a lead. It is, therefore, suggested that this power be retained.
- 7.11 If the Order prohibiting dog fouling is not replaced then the Council could not take any formal action to prevent dog fouling in the District. It is, therefore, recommended that this power also be retained.

7.12 Two issues have been identified in relation to the current Orders:

- The loss of the specific offence of 'failing to provide details' has removed the ability for Enforcement Officers to encourage offenders to provide details by reminding them that they are committing a further offence if they do not provide the requested information.
- In a small number of cases, the individual in actual control of the dog has been under the age of 16. This proves problematical since the young person may well not have the financial means to pay a fixed penalty notice and it is questionable whether pursuing them through the courts is in the public interest. Where the young person is below the age of 10 then they are below the age of criminal responsibility and the Council cannot take enforcement action.

7.13 A revised PSPO has been drafted (Appendix A) that reflects the provisions of the current PSPO but also addresses the two issues identified above by:

- Making it a further breach of the Order if an offender does not provide their details; and
- Specifying that the responsibility for the breach rests with the parent/carer where the person in actual control of the dog at the time of the breach is under 16.

7.14 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.

7.15 The Council will publish the text of the draft Order on its website.

7.16 The Council will also notify each Parish and Town Council within the District, and the County Council.

7.17 If the new Order is brought into force prior to 20<sup>th</sup> October 2020, then the existing Orders will be simultaneously discharged. 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.