PUBLIC SPACE PROTECTION ORDERS

1 PURPOSE OF REPORT

1.1 To allow Rochford District Council and Essex Police to tackle the anti-social behaviours outlined within the report, therefore protecting the quality of life of those who live in, work in and visit our District.

2 INTRODUCTION

2.1 Public Space Protection Orders (PSPOs) are a new provision, created by the Antisocial Behaviour, Crime and Policing Act 2014 intended to deal with any particular nuisances or problems in a defined area that are detrimental to the local community's quality of life. They can help by giving local authorities and police additional powers to tackle anti-social behaviour. The aim is to stop individuals or groups committing anti-social behaviour in public spaces by introducing restrictions on the use of an area.

2.2 A PSPO will in time replace existing provision of powers exercised through Dog Control Orders. Under the new Act these will continue to be valid for a period of three years from the commencement of the new provisions.

2.3 At present the Council made Dog Control Orders that came into Force on 11 August 2008. These Orders will be rescinded in November 2017, with the option of new Orders being created under the Antisocial Behaviour, Crime and Policing Act 2014.

2.4 If the PSPOs are not made, then when the existing Orders are rescinded, there will be an absence of power conferred by the PSPO and an impact on dealing with the issues by enforcement.

3 PUBLIC SPACE PROTECTION ORDERS

3.1 The power to make an Order rests with local authorities, in consultation with the police, Police and Crime Commissioner and other relevant bodies who may be impacted. The Council can make a PSPO on any public space within its own area. The definition of public space is wide and includes any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, for example a shopping centre. The maximum length of a PSPO is three years.

3.2 Breach of a requirement to desist in a particular activity is a criminal offence which can result in the issuing of a Fixed Penalty Notice (FPN) or a prosecution resulting in a fine of up to £1,000 on conviction. Enforcement can be undertaken by Council Officers, and other groups the Council may designate, but principally police officers and PCSOs. The use of these powers is intended to be proportionate. The decision as to whether or not to take enforcement action will be retained by the officer(s) dealing with the incident in line with our approved enforcement procedures.

3.3 If Council authorises the proposed PSPO, there is a further requirement for publicity within the Anti-Social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations. These state that where a Local Authority has made a PSPO, it must publish it on its website and erect such notices as considered sufficient to advise members of the public that the PSPO has been made and the effect of such an order.

3.4 Consideration of Public Spaces Protection Orders take place where there is material evidence of anti-social behaviour. Assessments would commonly include reports to the police, various council teams, and partner agencies

Consultation

3.5 There has been consultation with Essex Constabulary, including the Police and Crime Commissioner and Parish Councils.

3.6 A summary of the consultation responses can be found in Appendix 1 of this report. There was generally broad support for the introduction of the Orders. However, concern was expressed that public expectation relating to enforcement may be raised by the creation of the Orders when the practical application of enforcement of the Orders may not be possible.

3.7 Further areas were also put forward for inclusion within the Orders by parish councils, and it is proposed that such amendments to schedules relating to the Orders are considered by the Portfolio Holder once evidence has been collated to demonstrate their suitability.

Summary of the Proposed Orders

3.8 The recommendation is to introduce five orders that are as follows: -

(1) Dog Fouling - If a dog defecates at any time on land to which this order applies a person who is in charge of the dog at the time must remove the faeces from the land.

(2) Dogs on leads in specified areas - you must keep your dog on a lead at all times in specified area, for example, adjacent to roads.

(3) Dog exclusion in specified areas - it is an offence to allow a dog onto Rochford District Council owned land which has been designated to exclude dogs:

- All fenced children's playgrounds and areas which are designated and marked for children's play
- All fenced games areas e.g. tennis, ball courts, skate parks
- Marked playing pitches - when in use for playing sports

(4) Failing to produce a receptacle for picking up dog faeces - you must produce a means to pick up your dog's waste when asked to do so by an authorised officer.

(5) Congregation of motor vehicles and motorcycles in designated areas causing noise, public nuisance and danger to others.

The PSPO would remain in place for three years after which it could be renewed. The PSPO could also be varied at any time within this period. The details of the PSPOs are set out in Appendix 2.

3.9 Before introducing an order the Council must be satisfied that two conditions are fulfilled:

- that the activities are carried on/will be carried on in a specific area and impact upon quality of life;
- that activities are persistent/unreasonable.

and as a result the PSPO restrictions are reasonable and proportionate. Such considerations are set out in Appendix 1.

4 RISK IMPLICATIONS

4.1 When making a PSPO the Council must have particular regard to the rights of freedom of expression and freedom of assembly set out in the European Convention on Human Rights.

4.2 Risks currently revolve around the Council's duty to consult. The Council is requested to consider the consultation responses as outlined in Appendix 3 of this report.

4.3 Anyone who lives in, or regularly works in or visits a PSPO area can appeal a PSPO in the High Court within six weeks of issue. Further appeal is available each time the PSPO is varied by the council

4.4 The Council must ensure that the needs of the community are considered under the provisions of the Equalities Act 2010. This is addressed through the impact assessment, please see section 8 below.

5 CRIME AND DISORDER IMPLICATIONS

5.1 The introduction of the Public Space Protection Orders would allow further powers to be introduced to address antisocial behaviour within the district.

6 RESOURCE IMPLICATIONS

6.1 Signage would be required at the locations affected by the orders. In places where existing dog control orders, designated place protection orders and bylaws are to be replaced with PSPOs existing signage would be altered to

reflect this. In other areas new signage would be required. These costs would be met through existing revenue provision.

6.2 In addition, any appeals and/or judicial review of the Council's actions would incur a cost. Whilst some work would be undertaken by our own legal service team, there may be occasions when external legal advice needs to be sought. There is a limited revenue budget for these purposes

7 LEGAL IMPLICATIONS

The legal implications are within the body of this report.

8 EQUALITY AND DIVERSITY IMPLICATIONS

8.1 Equality issues have been considered as part of these proposals with an Equalities Risk Assessment having been completed. This is attached as Appendix 4.

8.2 The assessment concludes that there is a potential medium adverse impact on communities, in particular disabled, and young people. Proposed mitigation through ensuring a proportionate approach to enforcement by officers, and exemption of specific disabled groups would minimise any potential impact.

9 RECOMMENDATION

9.1 It is proposed that Council **RESOLVES**

(1) To exercise its powers under the Anti-Social Behaviour, Crime and Policing Act 2014 to introduce a Public Spaces Protection Order.

(2) To delegate any amendment to the PSPO schedule to the Assistant Director of Environment in consultation with the Portfolio Holder for Environment.

Marcus Hotten

Assistant Director, Environmental Services

Background Papers:-

None.

For further information please contact Marcus Hotten (Assistant Director, Environmental Services) on:-

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If you would like this report in large print, Braille or another language please contact 01702 318111.

Appendix 1

Date of Response		Comments	Action
13/09/201	Rayleigh Town Council	*Following the committee meeting on Monday members would like King George V Playing Field to be included in the Public Space Protection Order* *Members also mentioned Websters Way Car park but that is obviously for the District Council to decide*.	Both King George V Playing Field and Websters way Car Park are proposed to be included.
13/09/2017	Hawkwell Parish Council	*Thanks for your reply. Please could you attach the Schedules as they weren't attached.* *My members discussed the draft Orders at their Parks meeting on Monday evening. They would like the new orders to include Magnolia Nature Reserve under the `Dogs On Leads' section and also Magnolia Park Car park (if possible). The Dog Exclusion areas seems to already cover most of the District's Playgrounds but I don't think our playground at Elizabeth Close is included so if that could be added in to the `specific areas' that would be good.* *I note that you've indicated the draft orders will mirror the existing dog control orders initially, but if these other areas could be added from the start that would be appreciated. I'll wait to hear the outcome in due course.*	The proposed Schedules presently do not include Magnolia Nature Reserve or the car park under the 'Dogs on Leads' section, but could be considered at a later date when evidence requiring such an Order has be presented. The playground at Elizabeth Close has been added to the Schedule x?
16/09/17	Great Wakering Parish Council	*The only comment I would make is perhaps something could be added about the responsible disposal of dog faeces as what is currently happening around Gt Wakering is that people are removing the faeces from the land and bagging it but then just hanging it in trees/bushes etc. Lovely!!*	This would be viewed as an offence under the proposed 'Fouling' Order.
08/09/2017	Hockley Parish Council	*The only feedback Hockley Parish Council have is:* • *The council would not wish the Public Spaces Protection Enforcement Officers to be volunteers.* • *How will the enforcement be managed and funded?*	The issue of how the proposed Orders will be enforced is highlighted as risk within the report. It is not envisaged that volunteers will be used for the means of enforcement of the PSPOs.
07/09/201	Chief Inspector Rochford &	*I have consulted with my team and while we agree with the proposal and its aims, we are very conscious that*	The issue of how the proposed Orders will be enforced, and the

	Castle Point District – Essex Police	*RDC have no power or means to enforce currently.* *In other words, any enforcement of PSPOs would be reliant on the Police.* *And it follows that RDC (and Partners) would ask for / expect some sort of performance data in that regard, and hold the Police exclusively accountable.* *So I suppose my view, here and now, is that we support the idea in principle, but would be unwilling to be held accountable for any enforcement until such time as Partners (e.g. RDC) have their own means to issue/enforce also – thereby reinforcing this as a Partnership initiative*.	possibility of raising community expectations is highlighted as risk within the report.
07/09/2017	Canewdon Parish Council	*Canewdon Parish Council supports the document.*	
06/09/2017	Ashingdon Parish Council	*The Parish Council had the following comments to make:* *The following areas should be included within the designated areas under sections 8, 9 and 10 as they suffer from anti-social behaviour from cars, motorbikes particularly with alcohol and drugs:* *Both car parks at Ashingdon and East Hawkwell Memorial Hall* *The car park in Church Road*	The proposed Schedule 3 presently does not include, car parks at Ashingdon and East Hawkwell Memorial Hall Or the car park in Church Road, but could be considered at a later date when evidence for requiring such an Order has be presented.
15/09/2017	Barling Magna Parish Council	*Parish Councillors' concerns focused upon the clarity of the draft document. For example:* • *Page 2, point 2: "You must keep your dog on a lead at all times in a specified area, for example, adjacent to roads." The Parish Council believe this is rather all-embracing and ask if it might be clarified.* • *Page 3, point 3, bullet point 3: "when in use for playing sports." Does this mean when players are actually on the pitch or when specific areas have been prepared for sports use.* • *Page 2. point 6: "...or drug that is not alcohol or tobacco..." The Parish Council believes that this is too ambiguous. Grammatically it does not necessarily follow the previous reference to psychoactive drugs and it is all-embracing. Common sense*	

		suggests that prescription medication, for example, would not fall into this category but the wording needs to be clarified so that the meaning is clear. • *Page 5, point 6: Is a bicycle a mechanically propelled vehicle within the meaning of this clause? Should it be under every circumstance?* • *Page 7, point 11: "A person who habitually has dog in his possession...." is missing an indefinite article. Although a minor grammatical point, the Parish Council feels that the authority and clarity of documents such as this rests in part on their construction and grammar. There may be other such points that careful proof-reading will identify.* *In offering this feedback on the draft, I reassure you of the positive intent of the Parish Council and their desire simply to see the best possible outcome for local residents. Once again, they appreciate the work that has gone into this exercise and the opportunity to comment.*	
19/09/2017	Hullbridge Pariah Council	*Hullbridge Parish Council considered the Public Space Protection Orders last night at Full Council and would like to suggest that under item 11 it also includes Parish Council Employees as "an authorised officer".* *The areas that we would to be included under this Order are Kendal Park Nature Reserve, Rose Garden (end of Ferry Road), Hullbridge Recreation Ground, Pooles Lane car park and if possible footpaths 5/9/12.*	
17/09/2017	*Cllr J Lawmon*	*Serious consideration should be given to the health and safety of employees or representative of the Authority attempting to obtain personal details from Anti Social offenders and the possible conflict that may prevail.* *It is fair to assume that any person acting in a disorderly manner may be in an excited or anxious temperamental disposition and may opposed to interference from others. Where information is received from a suspected offender, difficulties arise in the confirmation or verification of the information supplied by that person. Due to lack of contact with the authorities, such as the Police, and the inability to check on these details, giving the opportunity for offenders to*	

		give false details. This impracticable situation will give rise to the lack of credibility of the officers *To the cynic, this order will enable the Police Authority to pass complaints to the Local District Council and placing the onus on Rochford District Council. Evidence of various complaints and recorded comments made by senior Police officers indicate that they will not be attending further complaints, and frustration with complainants will be forwarded at The District Council. Consideration should also be given to prosecution costs where offenders breach orders and the need to take offences to court for further enforcement or damages.*	

Appendix 2

The Public Spaces Protection Order – (Rochford District Council) 2017
DRAFT

Rochford District Council (in this order called "the Authority") hereby makes the following Order:
This Order comes into force on ******* for a period of 3 years.

General provisions:

1. A person who commits an offence under provision 10 (prohibition of alcohol consumption in designated areas) is liable on summary conviction to a fine not exceeding Level 2 on the standard scale. A person who fails to comply with any other obligation imposed by this order is guilty of a criminal offence by virtue of section 67(1) of the Anti-Social Behaviour, Crime and Policing Act 2014 and is liable on summary conviction to a fine not exceeding Level 3 on the standard scale.

Obligations on persons with dogs:

2. Fouling

If a dog defecates at any time on land to which this order applies a person who is in charge of the dog at the time must remove the faeces from the land immediately unless

(a) they have reasonable excuse for failing to do so; or
(b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so.

The offence does not apply to a person who –

(i) is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948; or
(ii) a person with a disability affecting their mobility, manual dexterity or ability to lift, carry or move everyday objects who relies upon a dog trained by a prescribed charity for assistance.

This applies to all land in the administrative area of the Authority to which the public or any section of the public has access, on payment or otherwise, as or right or by virtue of express or implied permission.

3. Dogs on leads in specified areas

A person in charge of a dog must keep the dog on a lead in designated areas Unless

(a) they have reasonable excuse for failing to do so; or
(b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to them failing to do so.

This applies to the designated areas of land specified in the Schedule 1 of this order.

4. Dog exclusion in specified areas

A person in charge of a dog must not take it into areas of Rochford District Council owned land which has been designated to exclude dogs unless

(a) they have reasonable excuse for failing to do so; or
(b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so.

The designated areas of land to exclude dogs are

- fenced children's playgrounds and areas which are designated and marked for children's play
- all fenced games areas e.g. tennis, ball courts, skate parks
- marked playing pitches – when in use for playing sports

This applies to the land specified in the Schedule 2 of this order

The offence does not apply to a person who –

(i) is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948; or

(ii) a person with a disability affecting their mobility, manual dexterity or ability to lift, carry or move everyday objects who relies upon a dog trained by a prescribed charity for assistance.

5. Failing to produce a receptacle for picking up dog faeces

A person in charge of a dog on land to which this order applies must have with them an appropriate means to pick up dog faeces deposited by that dog unless

(a) they have reasonable excuse for failing to do so; or
(b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so.

The obligation is complied with if, after a request from an authorised officer, the person in charge of the dog produces an appropriate receptacle to pick up dog faeces. A receptacle is defined as any object capable of holding faeces for disposal.

By way of guidance, a trouser or coat or other pocket is not such item for the purpose of this obligation. Neither is a handbag, rucksack, purse or sports bag.

The offence does not apply to a person who –

(i) is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948; or

(ii) a person with a disability affecting their mobility, manual dexterity or ability to lift, carry or move everyday objects who relies upon a dog trained by a prescribed charity for assistance.

This applies to all land in the administrative area of the Authority to which the public or any section of the public has access, on payment or otherwise, as or right or by virtue of express or implied permission.

Other Obligations

6. **Congregation of motor vehicles and motorcycles in designated areas causing noise, public nuisance and danger to others**.

No persons shall enter the designated areas, as listed in Schedule 4, in motor vehicles and motorcycles between the hours of 8pm and 6am for the purpose of engaging in vehicle displaying and racing. No persons shall attend or gather in the designated area for the purpose of watching motor vehicle and motorcycles for displaying or racing. No person shall congregate and loiter in groups and engage in behaviour that is likely to cause harassment, alarm or distress between the hours of 8pm to 6am.

7. For the purpose of this order:

- A person who habitually has dog in his possession shall be taken to be in charge of the dog at any time unless at that time some other person is in charge of the dog;

- Placing the faeces in a receptacle on the land which is provided for the purpose, or for the disposal of waste, shall be sufficient removal from the land;

- Being unaware of the defecation (whether by reason of not being in the vicinity or otherwise), or not having a receptacle for or other suitable means of removing the faeces shall not be a reasonable excuse for failing to

remove the faeces;

- "an authorised officer" means a Police Officer, Police Community Support Officer, an authorised employee, partnership agency or contractor of Rochford District Council who is authorised in writing by Rochford District Council for the purposes of giving directions under the Order.

8. Appeals

In accordance with Section 66 of the Act, any interested person who wishes to challenge the validity of this Order on the grounds that the Council did not have the power to make the Order or that a requirement under the Act has not been complied with may apply to the High Court within six weeks from the date upon which the Order is made.

Schedule 1- Dog on leads in specified areas

1. Subject to the exemption in paragraph 2 below:

    a) Each and every length of road (which term includes pavements or footways) in the Rochford District except public footpaths and bridleways; and
    b) The following public open spaces –
        i. Pooles Lane recreation ground, Hullbridge
        ii. Marylands Nature Reserve, Hockley
        iii. Kendall Park, Hullbridge
2. Excepted from the description in paragraph 1 above is land that is placed at the disposal of the Forestry Commissioners under section 39(1) of the Forestry Act 1967.

Schedule 2 – Dog Exclusion in specified areas

All land within the Council's administrative area compromising any enclosed children's play space. Without prejudice to the foregoing, this shall include the enclosed children's play spaces which are situated within the following public open spaces:-

King George's Playing Field, Ashingdon Road, Rochford

Playstalls, Off Little Wakering Road, Little Wakering

Canewdon Recreation Ground, Althorne Way, Canewdon

Great Wakering Recreation Ground, High Street, Great Wakering

Seaview Drive, Great Wakering

Morrins Close, Great Wakering

Glebe Close, Great Wakering

Conway Avenue, Great Wakering

Clements Hall Recreation Ground, Park Gardens, Hawkwell

Hawkwell Common, Hawkwell

Magnolia Nature Park, Rectory Road, Hawkwell

Hockley Woods, Main Road, Hockley

Laburnum Grove, Hockley

Betts Wood, Westminster Drive, Hockley

Plumberow Mount, Plumberow Avenue, Hockley

Hullbridge Playing Field, Pooles Lane, Hullbridge

Rawreth Playing Field, Rawreth Lane, Hullbridge

Fairview Playing Field, Victoria Road, Rayleig

Grove Recreation Ground, Grove Road, Rayleigh

Sweyne Park, Rayleigh

St John Fisher Playing Field, Little Wheatley Chase, Rayleigh

Causton Way, Rayleigh

Boston Avenue, Rayleigh

Hartford Close, Rayleigh

Fyfield Path, Rayleigh

Elsenham Court, Rayleigh

King George's Playing Field, Bull Lane, Rayleigh

Bedford Close, Rayleigh

Warwick Drive/Sutton Court Drive, Rochford

Rochford Recreation Ground, Stambridge Road, Rochford

Schedule 4

Webster Way Car Park, Websters Way, Rayleigh.

Appendix 3

Before introducing an order the council must be satisfied that two conditions are fulfilled:

- that the activities carried on/will be carried on in a specific area and impact upon quality of life;
- that activities are persistent/unreasonable.

and as a result the PSPO restrictions are reasonable and proportionate.

Order	Evidence
Dog Fouling	This will replace and replicate the existing The Dogs on Leads (ROCHFORD) ORDER 2008
Dogs on leads in specified areas	This will replace and replicate the existing The Dogs on Leads (ROCHFORD) ORDER 2008
Dog exclusion in specified areas	This will replace and replicate the existing The Dogs on Leads (ROCHFORD) ORDER 2008
Failing to produce a receptacle for picking up dog faeces	Presently we are experiencing approximately 1-2 complaints per week relating to dog-fouling. This measure would allow a pro-active approach to addressing the specific issue of dog fouling.
Congregation of motor vehicles and motorcycles in designated areas causing noise, public nuisance and danger to others	This would tackle the “car club” problems which periodically re-occur on Websters Way car park. A recent incident log set up residents indicated 16 occurrences of the problem in a 1 month period of June 2017.

Appendix 4

Equality Impact Assessment – [Enter policy]

Stage	Title	Purpose
1	Preliminary Assessment	Initial assessment to determine if there will be any adverse impact. If there is no impact at all on any group of users or the community, then only this Stage needs completing.
2	Equality Risk Assessment	Scoring to assess the level of risk.
3	Equality Impact Assessment – Identifying Adverse Impact	Level of detail depends on risk assessment scoring but any removal or reduction in service must go through Stage 3.
4	Sign Off	Approval and decision making details
5	Implementation	Action Plan to implement and minimise impact.

Stage 1 – Preliminary Assessment

Question	Response/Consideration
1.1 Policy or Service being assessed	Creation of Public Space Protection Orders
1.2 Lead Officer	Marcus Hotten – Assistant Director of Environmental Services
1.3 What are the aims or function of the policy or service?	To allow Rochford District Council and Essex Police to tackle the anti-social behaviours outlined within the report, therefore protecting the quality of like of those who live in, work in and visit our district.

Question	Response/Consideration
1.4 Which policies relate to the delivery of this service?	Environmental Enforcement
1.5 Will removing or reducing this service lead to members of the community being treated less favourably and so contribute to inequality?	No.

Stage 2 – Equality Risk Assessment

(1 = Low Impact, 2 = Medium Impact, 3 = High Impact)
(Total Score: 1 - 9 = Low Adverse Impact, 10 - 19 = Medium Adverse Impact, 20+ = High Adverse Impact)

2.1 Assess the Equality Risk

Policy/Practice	Age	Disability	Gender	Race	Sexuality	Religion	Gender Reassignment	Marriage/Civil Partnerships	Pregnancy /Maternity	Total Points	Impact H/M/L
Score	2	2	1	1	1	2	1	1	1	11	M

If a policy/practice has a score of 20 (High Adverse Impact) or over, please complete the full Equality Impact Assessment

2.2 Conclusion

There is potential for some adverse impact upon Disabled People, therefore to mitigate this the following exemption would apply. A person would not be expected to comply with this requirement of:

i) The person is registered as a blind person in a register compiled under Section 29 of the National Assistance Act 1948, or,

ii) The person has a disability which affects their mobility, manual dexterity, physical co-ordination 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

The order could also have a positive effect on disabled people because if it helps to support responsible dog ownership.

People in particular age groups – Young People – Officers are mindful that these orders are focused on addressing anti-social behaviour in public places. Often young people congregate in open spaces and we will ensure that we have a proportionate approach to addressing any issues raised by communities.