

29th July 2019

## AGENDA

Dear Councillor

You are summoned to a meeting of the:

**Devolved Services and Assets Committee**  
**to be held on Monday 5<sup>th</sup> August 2019 at 7.00pm**  
**at The Civic Centre, Sambourne Road, Warminster, BA12 8LB**

### Membership:

<b>Cllr Brett (East)</b>	<b>Cllr Macfarlane (West)</b>
<b>Cllr Doyle (East)</b>	<b>Cllr Nicklin (West)</b>
<b>Cllr Fraser (West) Chairman</b>	<b>Cllr Robbins (East)</b>
<b>Cllr Fryer (Broadway) Vice Chairman</b>	

Peter Hewitt (Volunteer); Stuart Legg, Park and Open Spaces Manager; Fiona Fox, Town Clerk and Responsible Financial Officer; Tom Dommett, Assistant Town Clerk; and other invited guests.

Copied to all other members for information.

Members of the public are warmly welcome to attend meetings of the Council and its committees, unless excluded owing to the confidential nature of the business.

Yours sincerely



**Fiona Fox BA (Hons) MCIPD FSLCC**  
**Town Clerk and Responsible Financial Officer**

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### 1. **Apologies for absence**

**To receive and accept** apologies, including reason for absence, from those unable to attend.

2. **Declarations of Interest**

**To receive** any declarations of interest under Warminster Town Council's (WTC) Code of Conduct issued in accordance with the Localism Act 2011.

3. **Minutes**

**3.1 To approve and sign** as a correct record, the minutes of the Devolved Assets and Services Committee meeting held on 28th May 2019; copies of these minutes have been circulated and Standing Order 12.1 provides that they may therefore be taken as read.

**3.2 To note** any matters arising from the minutes of the Devolved Assets and Services Committee meeting held on 28th May 2019.

4. **Chairman's Announcements**

**To note** any announcements made by the chairman.

***Standing Orders will be suspended  
to allow for public participation.***

5. **Public Participation**

**To enable** members of the public to address the committee with an allowance of three minutes per person regarding any item on the agenda and **to receive** any petitions and deputations.

***Standing Orders will be reinstated  
following public participation.***

6. **Reports from Unitary Authority Members**

**To note** reports provided which are relevant to this committee

7. **Working Groups Reporting Back**

**7.1 Play areas:** working on the transfer of play areas from Wiltshire Council to WTC. It is expected that lease agreements will be signed in the autumn.

**7.2 Paddling pool regeneration:** The working group recommendations were approved by Full Council on 24<sup>th</sup> June. Steve Matthews has taken on the role of project Manager.

**7.3 Asset and service transfer from Wiltshire:** A meeting was held on 8<sup>th</sup> July to discuss information from Wiltshire Council and Idverde. Visits to other Town Councils are being arranged and further research being undertaken.

8. **Clerk's Report: Lake Pleasure Grounds and Associated Land**

**For noting.**

9. **Protecting Wildlife on the Lake**

**Members agreed that a full report was to be made to this meeting (see attached). Members are asked to decide which of the options if any they wish to implement.**

**10. Suggestions from Sustainable Warminster**

At the May 2019 meeting, members received a request from Sustainable Warminster asking the town council to consider several proposals. Officers have prepared a report (see attached). **Members are asked to decide which of the options if any they wish to see implemented.**

**11. Dogs on lead signs**

Following public concern about behaviour of a few dog owners in the Lake Pleasure Ground, Officers are advising that the Council purchase 10 signs to be installed in the Lake Pleasure Ground advising that dog owners keep dogs on a lead and away from wild fowl. (see attached)

**12. Tree Trail**

In February 2019 the Council purchased for 1000 x A5 portrait saddle stitched brochures with gloss 170 gsm covers and silk 115gsm inner pages for £437 + VAT. The council has approximately 200 copies left. The author has indicated that they would be happy to revise the original version. **Councillors are asked to decide whether they wish to reprint a revised version of the tree trail. This could be paid from within the Park budget.**

**13. Skatepark**

Members are requested to decide if they wish to install new fencing to go around the skatepark, to be in place for the opening of the skatepark. (see attached report)

**14. Community Infrastructure Levy (CIL) Funding**

Members are requested to put forward any projects that they would like the CIL working group to consider for WTC CIL funding.

**15. Communications**

**15.1 The members to decide on items requiring a press release.**

**15.2 The members to confirm their spokesperson for any item listed on the agenda to report on the Council's decision if required.**

**The date of the next Devolved Services and Assets Committee will be Monday 30<sup>th</sup> September 2019 at 7.00pm**

Minutes from this meeting will be available to all members of the public either from our website [www.warminster-tc.gov.uk](http://www.warminster-tc.gov.uk) or by contacting us at Warminster Civic Centre.

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## **Devolved Assets and Services 5<sup>th</sup> August 2019**

### **Clerk's Report: Lake Pleasure Grounds and Associated Land**

- 1 Lake Pleasure Grounds:** tarmacking the path running parallel to the River Were and the three areas which were agreed in April has been completed.
- 2 Lake:** See agenda
- 3 Pavilion Café:** Continues to do well. Sales, particularly of ice-cream and cold drinks are very weather dependant.
- 4 Skatepark:** Work on the haul road was completed. Work on the stake park commenced on 1<sup>st</sup> July. Members are given regular weekly updates. It has been necessary to strengthen a small section of the haul road at a cost of £650 + VAT.
- 5 Putting green:** the additional picnic tables and benches have been installed in the putting green area. The number of players has been considerably higher. We believe due to the larger flags being more visible and the greens being maintained to a higher specification. From May 30<sup>th</sup> to July 11<sup>th</sup> 2019, 173 putters were hired at £1.50 each.

In the past few days, there have been a few incidents of antisocial behaviour in the putting green area in the early evening. Officers are working with the community policing team to tackle this issue.

- 6 Central Car Park public conveniences**  
Nothing to note.  
**Lake Pleasure Grounds public conveniences:** The insurance claim for the damaged door was accepted and a new door has been installed on 11-12<sup>th</sup> July.
- 7 Tennis courts:** The number playing has been higher this month partly due to the good weather and Wimbledon. From May 30<sup>th</sup> to July 11<sup>th</sup> 2019, there have been 80 hires of rackets and balls although far more people bring their own equipment.
- 8 Boats on the lake:** Nothing to report
- 9 MUGA area:** Nothing to report.
- 10 The Boat House:** Nothing to report.
- 11 Tree works:** nothing to report
- 12 Green Flag:** The Lake Pleasure Grounds was presented with The Green Flag Award for the third in a row. A celebration event and flag hoisting was held on Thursday 18<sup>th</sup> July with much favourable publicity generated including BBC Radio Wiltshire broadcasting 4 live interviews from the Lake Pleasure Grounds. The judge's feedback is available to members on request.

- 13 Paddling Pool:** The pool is scheduled to close for repairs on 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> of August.
- 14 Elizabeth Collyns Garden:** Nothing to report.
- 15 Play Areas –**  
It was previously reported that some gardens backing onto the Dene play area had installed gates directly into the play area. This could potentially cause issues in the future. Wiltshire Council wrote to those with the gates requesting that they are removed without delay. However, it transpired that they gates were originally been installed decades ago and the letter was withdrawn.

**Tom Dommett**  
**Assistant Town Clerk**  
**29.07.2019**

## **REPORT FOR DECISION**

### **Protection of wildlife, Lake Pleasure Grounds**



#### **Purpose of the Report.**

**To allow councillors to consider a range of options designed to offer wildfowl on the islands better protection and to decide which, if any, they wish to implement.**

#### **Update – Protecting Wildlife in the Lake**

Following a complaint from a member of the public concerning the launch of the boats upsetting the male swan and causing it to leave the lake, members considered the issue at their April 2019 meeting.

At the April 2019 meeting, members decided not to stop having boats on the lake, but the committee agreed that the council supported better protection of the wildlife and the islands in the lake and that investigation and implementation of the exact measures would be delegated to the Clerk and Chairman, with the understanding all members would be consulted on proposals and any action to be ratified at the next meeting.

Subsequent to that, at the May 2019 meeting, the committee agreed that a full report would be made at the next meeting of the committee giving options with costings.

The purpose of this report is to assist members in considering the options and reaching a decision about which if any measures they wish to see implemented.

## Background

The Lake Pleasure Grounds were formally opened by the Marquis of Bath at 4pm on Saturday 26<sup>th</sup> July 1924. At the time there were four rowing boats and two children's canoes available for hire. (See below postcard from Circa 1928.) More recently a little while after Wiltshire Council stopped running boats on the lake four pedaloos were introduced by the Friends of Warminster Park. In 2018 Warminster Town Council decided to re-introduce rowing boats after many requests from members of the public. Warminster Town Council now have four rowing boats and two children's canoes available for hire.

These are available to hire on Weekends and during school holidays from May to the beginning of September.



The lake is a major attraction, with many people visiting from other towns to enjoy the unique setting. Many users enjoy getting closer to nature with the majority respecting the wildlife.

Boats staff are instructed to ensure users do not get too close to the wildlife or upset them.

Officers have been investigating many options to ensure that the wildlife is protected and the habitat enhanced.



## Swans

The Swan Sanctuary, a charity with over 100 years' experience of caring for swan welfare. The Swan Sanctuary advised that if the nesting female's mate has disappeared/been killed; she is quite capable of rearing the cygnets alone. People often worry that nesting females will starve to death when they have lost their mates as they are scared to leave their nests in search of food – this is incorrect. All female swans feast before nesting as they know food will be harder to come by once they are on the nest – it is normal for them to lose weight during the nesting period.

The mortality rate for Cygnets is 31% in the first two weeks.

Swans do not directly feed their young. Cygnets are vulnerable to many predators such as seagulls, herons and crows.

Generally speaking, if a swan family does have a cygnet that is not strong enough when it comes to swimming, etc the cob (male swan) will either chase it from the group or kill it.

Officers have met with an officer from Wiltshire Wildlife Trust to discuss the options available.

### **1. Fencing around the islands to ensure boats cannot get close to the nesting wildfowl.**



Officers invited five local fencing companies to quote for the work with the following specification:

- *Scope of work required- Approximately 170 meters of post and chain fencing to be installed in the lake around the two islands in the lake pleasure grounds approximately 1 meter from the bank.*
- *Posts to be square 100mm Oak posts to be driven into the lakebed at 3-meter intervals. With a finish height of 1200mm. With 50mm x 6mm galvanised chain linking the posts.*

Responses were received from Woodford Forest and Landscapes, South Coast Fencing, Bourton Fencing all declining to provide a quotation. We have not had a reply from Allsorts of fencing. A quotation has been received from Warminster Fencing. To carry out the work to the above specification will be £6189.76 +VAT

## **2. Using marginal planting around the islands to prevent boats getting close to nesting birds.**

Officers looked at alternatives to fencing around the islands and discovered floating marginal reed beds from Aquamaintain (see picture below) Other providers were approached with the cost being comparable.



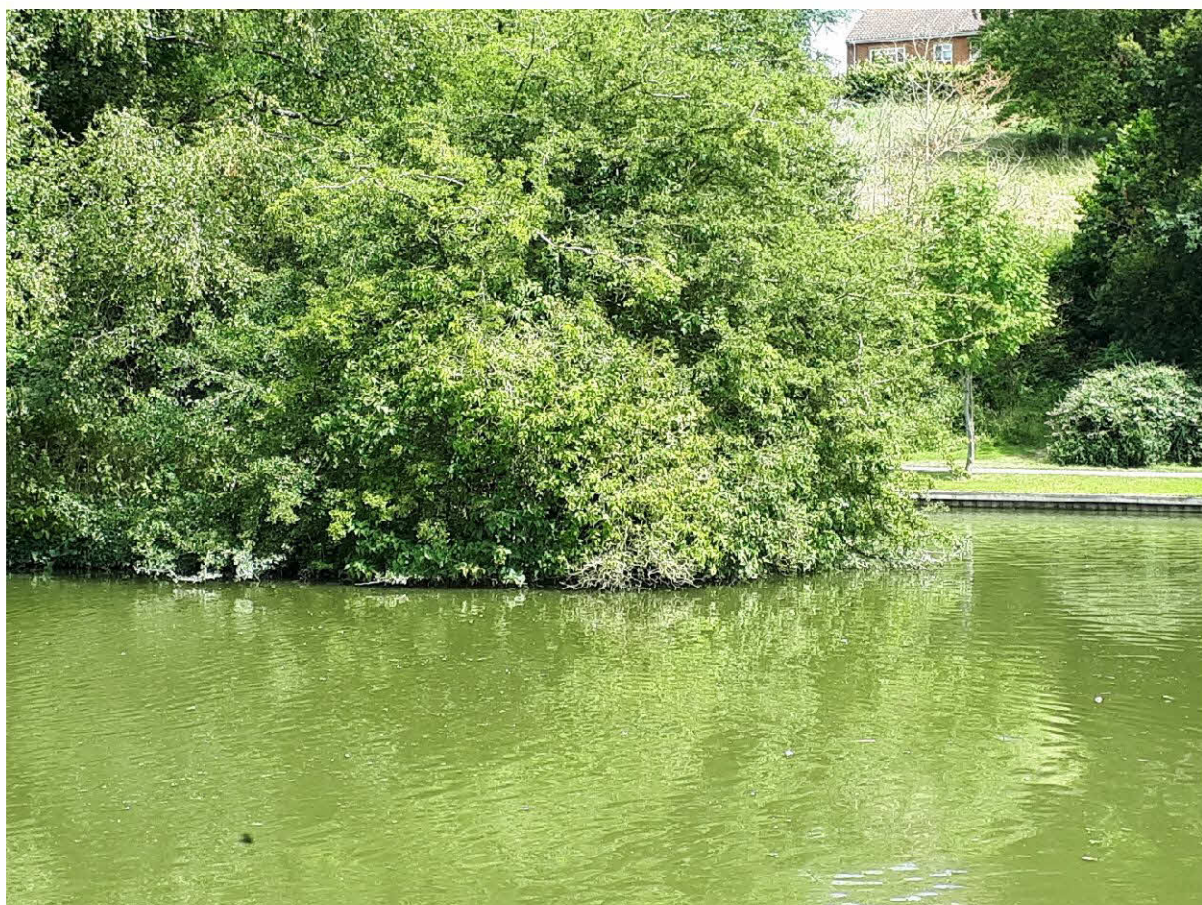
These create a physical barrier around the island preventing boats from getting too close and also enhance the habitat. The floating rafts can come with wildfowl protection to ensure the birds do not decimate the newly planted bed. The plants will grow through this protection over time.

The cost for a 500cm wide bed with wildfowl protection is £127 per linear meter. To fill in all bare banks around both islands would require approximately 90 meters. Total cost £11,430

## **3. Planting on the islands to create a physical barrier to prevent boats getting close to nesting birds.**

Officers looked at a third option to protect the nesting wildfowl on the islands. The islands have vegetation growing over the banks and into the water in some places. This creates a natural barrier. (See picture below)





Planting more vegetation on the island edges would, overtime grow over banks softening the edges of the islands creating the barrier to boats but not to wildlife.

Officers noted that as the islands have Japanese Knotweed (which is under a management plan) the new plants may struggle to establish. This is particularly true on the first island where the Japanese Knotweed is well established.

A mixture of species is suggested these include: Hawthorne, Blackthorne, Goat willow, Holly, Dog Rose and Hazel. Planted in double staggered rows 50 cm apart. In total the 90 meters of bare bank would require just under 400 plants. The cost of this will be approximately £420 depending on this year's bare root plant cost (not available until September/October) and the species mix % used.

### **Options**

Members have to consider what problem or problems they are seeking to address and how the proposed measure will solve or tackle the problem(s).

Given the pressure and demands on council funds members need to think of the cost/benefit of any proposed course of action.

Members will always have to consider the wishes of different members of the public who will have differing views as to what is their priority in the park.

Whether any or none of the three options are adopted by the Council, offers will continue to manage boat staff to try and reduce any undesirable behaviour, more duck ramps will be installed around the lake and there are other items on the agenda about signage for dog owners and planting in the Lake that may be considered relevant to this issue.

**Financial and Resource Implications.**

**These are dependant on the option selected.**

Option 1 – Fencing around the Islands - £6189.76 +VAT

Option 2 - Floating marginal reed beds - £11,430

Option 3 – Planting on the Islands - £420

Money would be taken from reserves to finance any of the options.

**Legal Implications and Legislative Powers**

The Council has the power to provide this service under the General Power of Competence.

**Environmental Implications**

The appointed contractor will be responsible to ensure any required licences are sought before any work is undertaken.

**Risk Assessment**

Officers do not consider there are any issues.

**Crime and Disorder**

Officers are not aware of any issues the Council should consider under the Crime and Disorder Act.





To Stuart Legg  
Warminster Town Council  
Civic Centre  
Sambourne Road  
Warminster  
BA12 8LB

12th March 2019

Dear Mr Legg,

I am writing on behalf of Sustainable Warminster regarding the town park and boating lake. The park and lake have seen huge improvements since the Town Council took them over, and it was great to see so many people enjoying the boating last summer. We are now requesting a change which could enhance the lake further.

A number of people have noted that the edges of the lake are now much too high for any small mammal such as a hedgehog to climb out, if it is unlucky enough to fall in. The duck ramps would not help as they stick too far out into the water. However, if a small area at the far end of the lake from the boathouse were to be planted with attractive species such as flag iris, reeds and water lilies, there could be an escape route. Such planting would also provide refuge for fish fry etc. and improve the ecological diversity of the area.

Any changes made at the Eastern end of the lake are unlikely to affect the enjoyment of people boating, since very few go that far. Sustainable Warminster are willing to provide some effort to get such a planting / refuge established. I enclose an illustration of the kind of refuge we are suggesting. Please let me know if the council would be prepared to consider this proposal.

We are also very interested in looking at how the town can help pollinating insects locally, perhaps through the flower planting in the park, or by reducing the amount of grass cutting on road verges etc. The topic has been much in the news lately, and developing a local pollinator action plan would again be something we might be able to provide some effort towards.

Thanks in anticipation for your attention.

Maggie Richens  
Chair, Sustainable Warminster

**Co- signed**

Name

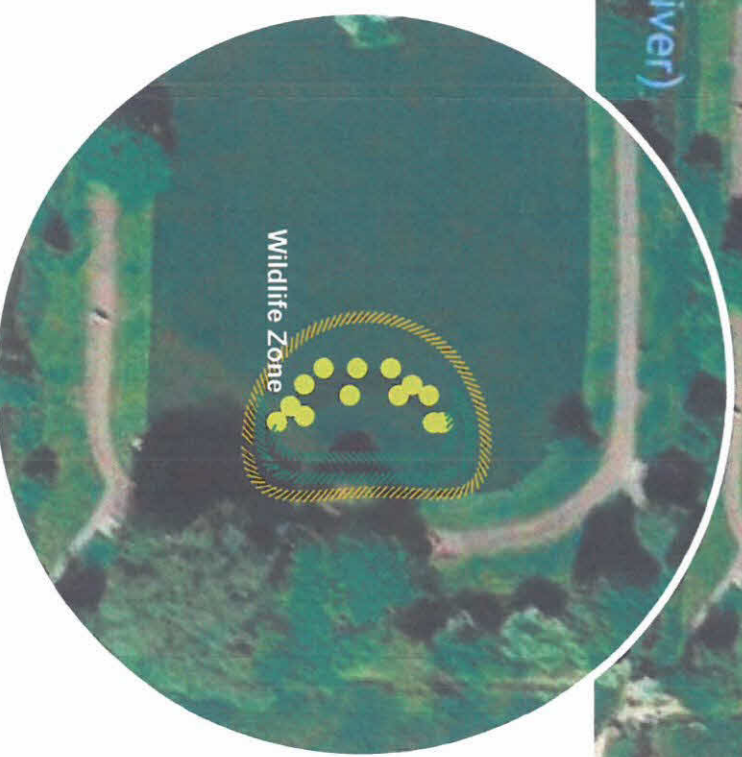
Signature

Maxwell Richens

Colin French

## Town Park

## Ecological Improvements and measures to save animals from potential drowning





## **REPORT FOR DECISION**

### **Suggestions from Sustainable Warminster**

#### **Recommendation**

Councillors to decide if they wish to plant designated areas within the lake to increase biodiversity.

#### **Purpose of the Report.**

To explain the options to consider and assist members in reaching decisions.

#### **Background**

A letter was received from Sustainable Warminster asking the town council to consider several projects. (see attached letter and plan)

#### **1. Request for marginal planting to aid animals to get out of the lake and increase biodiversity.**

Locations are marked in red on the below plan.

As the lake has vertical sides marginal planting is not easy as all marginal plants do not survive in deep water. This presents the largest obstacle to marginal planting.

Officers considered many options including the suggestion from Sustainable Warminster to use hazel hurdles to enable animals to climb out of the lake. The cost for these is £40 each.

Officers considered floating marginal reed beds from Aquamaintain (see picture below) Other providers were approached with the cost being comparable)



The floating rafts can come with wildfowl protection to ensure the birds do not decimate the newly planted bed. The plants will grow through this protection over time.

The cost for a 500cm wide bed with wildfowl protection is £127 per linear meter. The suggested total area is circa 40 linear meters. Total - £5080

Another option considered is to use gabion boxes filled with clean stone to build up the lakebed to a level suitable for marginal plants. Coir rolls can then be secured to the top and planted. Approximate costs are £131 per linear meter. Total for 40 meters - £5240

## **2. Request for areas at the end of lake to be planted to increase biodiversity.**

An area was suggested by Sustainable Warminster to be planted towards the NE corner of the lake. (Blue in plan below) This can be carried out using water lilies and oxygenating



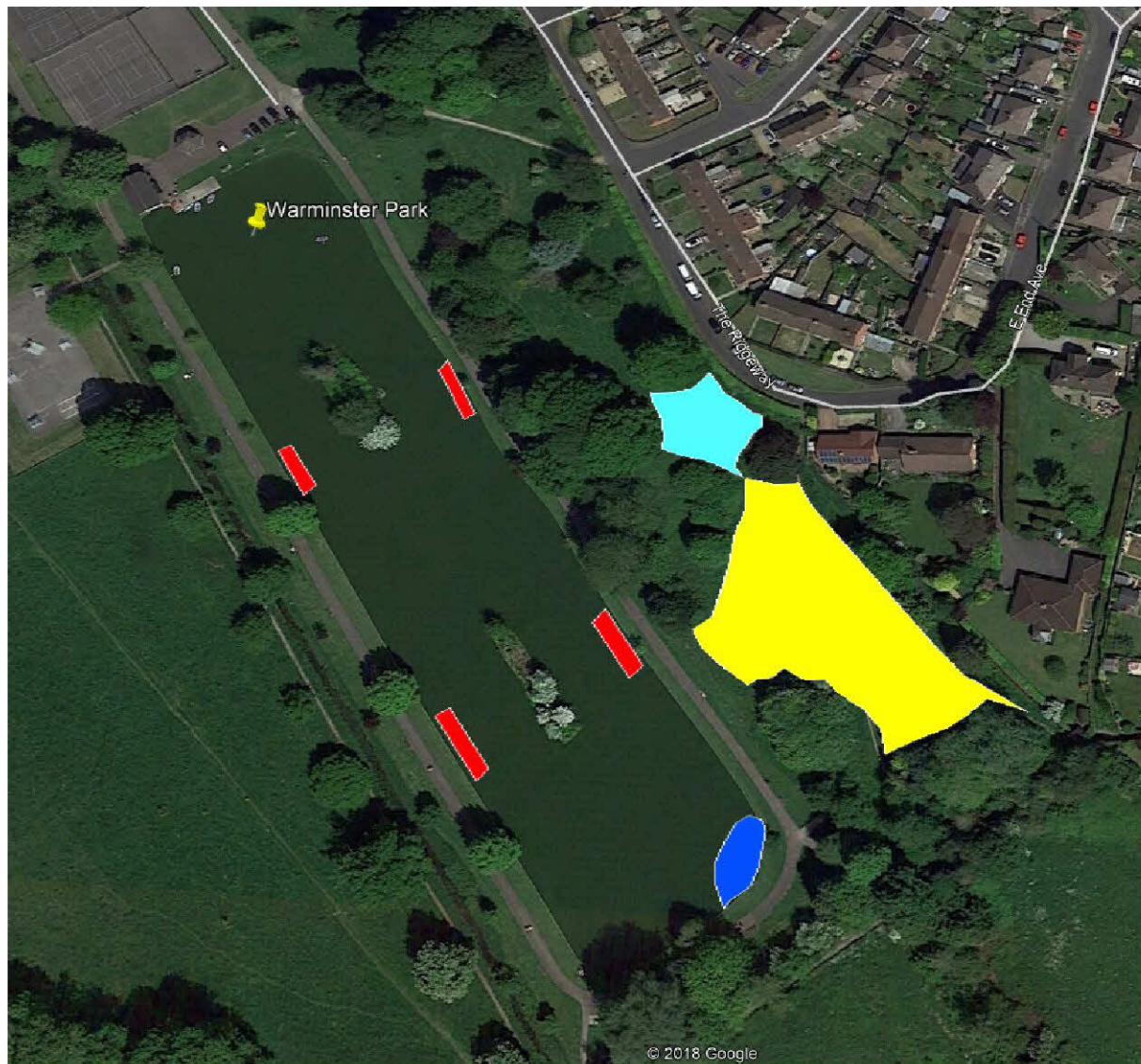
plants. This will help to oxygenate the lake and also create a safe haven for invertebrates and fish fry.

Lilies can be planted in water up to 1500mm deep which means they will be suitable for the lake. Officers research led them to believe that wild fowl are not likely to eat lilies however it must be considered that there is always a risk of this. Therefore, it is

suggested that large, well developed plants are used.

The cost for plants for the site shown on the plan (approx. 150 m<sup>2</sup>) is around £1100 dependent on species used.





Officers have risk assessed the planting in relation to the hire of boats and do not feel there is any reason for concern.

Sustainable Warminster have indicated that they are willing to potentially help with labour and may be able to source some plants.

### 3. Help pollinating insects through additional planting.



Sustainable Warminster have requested that the Town Council consider methods to help pollinating insects. The Wildflower meadow was planted in the lake Pleasure Grounds in November 2016. This is an area approximately 2000m<sup>2</sup> (Yellow on plan). This has been successful with Warminster School surveying the area as part of their Community action day and recording ten species of wildflower currently flowering. The meadow is currently included in the park management plan.

Officers advise that the meadow could be extended further NW along the bank in the future at a cost of approximately £1.91 per square meter. Officers suggest that Councillors consider extending the wildflower meadow by approximately 400 m<sup>2</sup>. (light blue on above plan) Total cost- £764.00

Officers also discovered a '*Beepol Villa & Live Bumblebee Colony Range*'

This colony of native British bees comprises a Queen, workers and eggs. When delivered

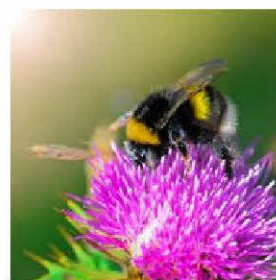


this large hive holds 60–80 worker bees, with the hive population increasing to much higher numbers over the course of a season.

Supplied with sugar water as an initial internal food source, this colony of native *Bombus terrestris audax* should live for 2–3 months, depending on weather and conditions.

It is ideal for increasing the biodiversity of wildlife areas.

These could be placed in the trees around the wildflower



meadow.

The cost for these is £145.85 per colony. These will be available from May 2020.

### Recommendations

Officers recommend the instillation of at least two hazel hurdles at a cost of £40 each to enable animals to climb out of the lake.

Officers also recommend the planting of water lilies and oxygenating plants to create a mini eco system at the end of the lake. At a cost of £1100

### Financial and Resource Implications

Floating rafts - £5080

Gabian Boxes - £5240

Planting Lillies - £1100

Extending the Wildflower meadow - £764.00

Bee Colony - £145.85

Any spending could be funded from earmarked reserves for services to be devolved.

**Legal Implications and Legislative Powers**

The Council has the power to provide this service under the General Power of Competence.

**Environmental Implications**

The appointed contractor will be responsible to ensure any required licences are sought before any work is undertaken.

**Risk Assessment**

Any appointed contractor will carry out their own risk assessment. Warminster Town Council will continue to inspect as part of our ongoing inspections.

**Crime and Disorder**

Officers are not aware of any issues the Council should consider under the Crime and Disorder Act.

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## **REPORT 'Dogs on a lead' signs**

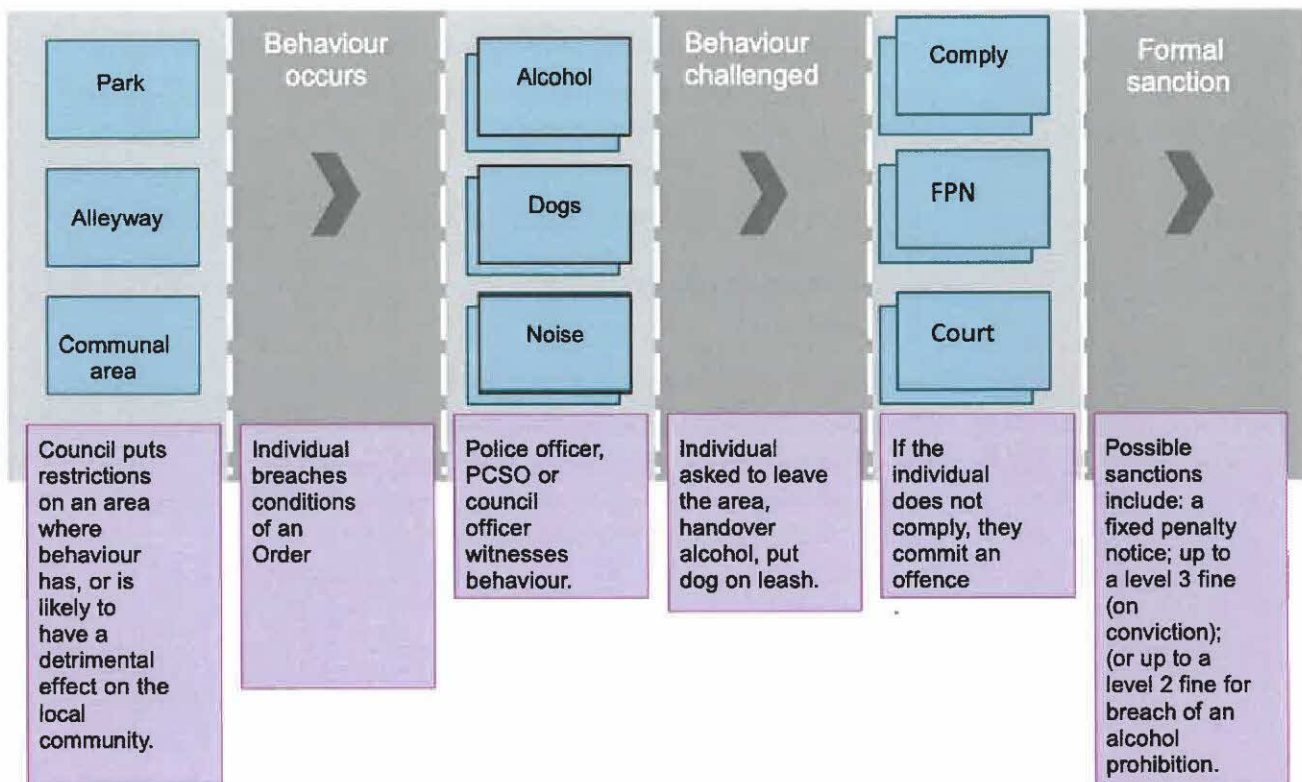
1. Members of the public and councillors have expressed concern about dog owners who allow their dogs to chase wild fowl in the Lake Pleasure Grounds, including an incident which led to the death of a cygnet.
2. Currently there is just one sign advising that dog owners keep dogs on a lead and away from wild fowl, at the main entrance by the putting green.
3. Officers advise that the Council purchase 10 further signs, to be installed at various locations in the Lake Pleasure Ground, advising that dog owners keep dogs on a lead and away from wild fowl.
4. It is thought that clear request and social pressure will be the best method of securing enforcement of the dogs on lead. It should be remembered that 25% of household own at least one dog, and the vast majority are responsible and loving owners.
5. In addition the Wiltshire Dog Warden will carry out patrols in the Lake Pleasure Grounds.
6. All dog owners have to abide by many laws relating to their pets, that can be used to tackle poor ownership.
7. Officers have considered the option of requesting a Public Space Protection Order (PSPO). Powers to create PSPOs came into force in October 2014, replacing most previous legislation. The Government Guidance on PSPO's is included below.
8. The town council would have to apply to Wiltshire Council if it wishes to pursue the option of a PSPO.
9. Officers advise that applying for a PSPO should not be pursued at this stage.



## 2.5 Public Spaces Protection Order

Purpose	Designed to stop individuals or groups committing anti-social behaviour in a public space.
Who can make a PSPO	<ul style="list-style-type: none"> <li>Councils issue a Public Spaces Protection Order (PSPO) after consultation with the police, Police and Crime Commissioner and other relevant bodies.</li> </ul>
Test	<p>Behaviour being restricted has to:</p> <ul style="list-style-type: none"> <li>be having, or be likely to have, a detrimental effect on the quality of life of those in the locality;</li> <li>be persistent or continuing nature; and</li> <li>be unreasonable.</li> </ul>
Details	<ul style="list-style-type: none"> <li>Restrictions and requirements set by the council.</li> <li>These can be blanket restrictions or requirements or can be targeted against certain behaviours by certain groups at certain times.</li> <li>Can restrict access to public spaces (including certain types of highway) where that route is being used to commit anti-social behaviour.</li> <li>Can be enforced by a police officer, police community support officers and council officers.</li> </ul>
Penalty on breach	<ul style="list-style-type: none"> <li>Breach is a criminal offence.</li> <li>Enforcement officers can issue a fixed penalty notice of up to £100 if appropriate.</li> <li>A fine of up to level 3 on prosecution.</li> </ul>
Appeals	<ul style="list-style-type: none"> <li>Anyone who lives in, or regularly works in or visits the area can appeal a PSPO in the High Court within six weeks of issue.</li> <li>Further appeal is available each time the PSPO is varied by the council.</li> </ul>
The legislation	Sections 59 to 75 of the Anti-social Behaviour, Crime and Policing Act 2014.
Protecting the vulnerable	<ul style="list-style-type: none"> <li>Consideration should be given to how the use of this power might impact on the most vulnerable members of society.</li> <li>Consideration should also be given to any risks associated with displacement, including to where people may be dispersed to</li> <li>There is value in working in partnership to resolve ongoing problems and find long term solutions.</li> </ul>

## Public Spaces Protection Order



### Purpose

Public Spaces Protection Orders are intended to deal with a particular nuisance or problem in a specific area that is detrimental to the local community's quality of life, by imposing conditions on the use of that area which apply to everyone. They are intended to help ensure that the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.

Given that these orders can restrict what people can do and how they behave in public spaces, it is important that the restrictions imposed are focused on specific behaviours and are proportionate to the detrimental effect that the behaviour is causing or can cause, and are necessary to prevent it from continuing, occurring or recurring.

### Who can make a PSPO?

Local councils are responsible for making Public Spaces Protection Orders: district councils should take the lead in England with county councils or unitary authorities undertaking the role where there is no district council. In London, borough councils are able to make Public Spaces Protection Orders, as is the Common Council of the City of London and the Council of the Isles of Scilly. In Wales, responsibility falls to county councils or county borough councils. Parish councils and town councils in England, and community councils in Wales are not able to make these Orders. In addition, section 71 of the Anti-social Behaviour, Crime and Policing Act 2014 allows bodies other than local authorities to make Public Spaces Protection Orders in certain circumstances by order of the Secretary of State. This power has been exercised by the Secretary of State to allow the City of London Corporation to manage a number of public spaces with the permission of, and on behalf of, local authorities.



## Details

**The legal tests:** The legal tests focus on the impact that anti-social behaviour is having on victims and communities. A Public Spaces Protection Order can be made by the council if they are satisfied on reasonable grounds that the activity or behaviour concerned, carried out, or likely to be carried out, in a public space:

- has had, or is likely to have, a detrimental effect on the quality of life of those in the locality;
- is, or is likely to be, persistent or continuing in nature;
- is, or is likely to be, unreasonable; and
- justifies the restrictions imposed.

**Putting victims first:** In deciding to place restrictions on a particular public space, councils should consider the knock on effects of that decision and ensure that this is a reasonable and proportionate response to incidents of anti-social behaviour in the area. Introducing a blanket ban on a particular activity may simply displace the behaviour and create victims elsewhere.

**Where can it apply?** The council can make a Public Spaces Protection Order 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.

**Consultation and working with partners:** Before making a Public Spaces Protection Order, the council must consult with the police. This should be done formally through the chief officer of police and the Police and Crime Commissioner, but details could be agreed by working level leads. This is an opportunity for the police and council to share information about the area and the problems being caused as well as discussing the practicalities of enforcement. In addition, the owner or occupier of the land should be consulted. This should include the county council (if the application for the Order is not being led by them) where they are the Highway Authority.

The council must also consult whatever community representatives they think appropriate. It is strongly recommended that the council engages in an open and public consultation to give the users of the public space the opportunity to comment on whether the proposed restriction or restrictions are appropriate, proportionate or needed at all. The council should also ensure that specific groups likely to have a particular interest are consulted, such as a local residents association, or regular users of a park or those involved in specific activities in the area, such as buskers and other street entertainers.

**Openness and accountability:** Before the Public Spaces Protection Order is made, the council must publish the draft order in accordance with regulations published by the Secretary of State and ensure that the draft order is available on its website.

Given that the effect of Public Spaces Protection Orders is to restrict the behaviour of everybody using the public place, the close or direct involvement of elected members will help to ensure openness and accountability. This will be achieved, for example, where the decision is put to the Cabinet or full Council.

### Land requiring special consideration

Before a council makes a Public Spaces Protection Order it should consider whether the land falls into any of the following categories:

- **Registered common land:** There are around 550,000 hectares of registered common land in England and Wales. Common land is mapped as open access land under the Countryside and Rights of Way (CROW) Act 2000 with a right of public access on foot. Some commons, particularly those in urban districts, also have additional access rights and these may include rights for equestrian use.
- **Registered town or village green:** Town and village greens developed under customary law as areas of land where local people indulged in lawful sports and pastimes. These might include organised or ad-hoc games, picnics, fetes and similar activities, such as dog walking.
- **Open access land:** Open access land covers mountain, moor, heath and down and registered common land, and also some voluntarily dedicated land, for example the Forestry Commission's or Natural Resources Wales' freehold estate. Open access land provides a right of open-air recreation on foot although the landowner can voluntarily extend the right to other forms of access, such as for cycling or horse-riding.

This can be done by contacting the Commons registration authority (county council in two-tier areas; unitary authority elsewhere). If the land in question is a registered common, the council will be able to find out what common land rights exist and the access rights of any users. The Department for Environment, Food & Rural Affairs considers the model set out in 'A Common Purpose' to be good practice in consulting directly affected persons (including commoners) and the public about any type of potential change in the management of a common.

If land is a registered green, it receives considerable statutory protection under the 'Victorian Statutes'. In terms of open access land, there are various national limitations on what activities are included within the access rights. It is possible for local restrictions on CROW rights to be put in place to meet wider land use needs, and this system is normally administered by Natural England.

Where an authority is considering an order on one of these types of land, the council should consider discussing this with relevant forums and user groups (e.g. Local Access Forums, Ramblers or the British Horse Society) depending on the type of provision that is contemplated in the order. It could also be appropriate to hold a local public meeting when considering whether to make an order for an area of such land to ensure all affected persons are given the opportunity to raise concerns.

**What to include in a Public Spaces Protection Order.** The Order can be drafted from scratch based on the individual and specific issues being faced in a particular public space. A single Order can also include multiple restrictions and requirements. It can prohibit certain activities, such as the drinking of alcohol, as well as placing requirements on individuals carrying out certain activities, for instance making sure that people walking their dogs keep them on a lead in designated areas.



When deciding what to include, the council should consider scope. The broad aim is to keep public spaces welcoming to law abiding people and communities and not simply to restrict access. So restrictions or requirements can be targeted at specific people, designed to apply only at certain times or apply only in certain circumstances.

**Putting victims first:** Although it may not be viable in each case, discussing potential restrictions and requirements prior to issuing an Order with those living or working nearby may help to ensure that the final Order better meets the needs of the local community and is less likely to be challenged.

In establishing which restrictions or requirements should be included, the council should be satisfied on reasonable grounds that the measures are necessary to prevent the detrimental effect on those in the locality or reduce the likelihood of the detrimental effect continuing, occurring or recurring.

As with all the anti-social behaviour powers, the council should give due regard to issues of proportionality: is the restriction proposed proportionate to the specific harm or nuisance that is being caused? Councils should ensure that the restrictions being introduced are reasonable and will prevent or reduce the detrimental effect continuing, occurring or recurring. In addition, councils should ensure that the Order is appropriately worded so that it targets the specific behaviour or activity that is causing nuisance or harm and thereby having a detrimental impact on others' quality of life. Councils should also consider whether restrictions are required all year round or whether seasonal or time limited restrictions would meet the purpose.

When the final set of measures is agreed the Order should be published in accordance with regulations made by the Secretary of State and must:

- identify the activities having the detrimental effect;
- explain the potential sanctions available on breach; and
- specify the period for which the Order has effect.

### **Homeless people and rough sleepers**

Public Spaces Protection Orders should not be used to target people based solely on the fact that someone is homeless or rough sleeping, as this in itself is unlikely to mean that such behaviour is having an unreasonably detrimental effect on the community's quality of life which justifies the restrictions imposed. Councils may receive complaints about homeless people, but they should consider whether the use of a Public Spaces Protection Order is the appropriate response. These Orders should be used only to address any specific behaviour that is causing a detrimental effect on the community's quality of life which is within the control of the person concerned.

Councils should therefore consider carefully the nature of any potential Public Spaces Protection Order that may impact on homeless people and rough sleepers. It is recommended that any Order defines precisely the specific activity or behaviour that is having the detrimental impact on the community. Councils should also consider measures that tackle the root causes of the behaviour, such as the provision of public toilets.

The council should also consider consulting with national or local homeless charities when considering restrictions or requirements which may impact on homeless people and rough sleepers.



## **Controlling the presence of dogs**

Under the Animal Welfare Act 2006, owners of dogs are required to provide for the welfare needs of their animals. This includes providing the necessary amount of exercise each day, which in many cases will require dogs to be let off the lead whilst still under control.

Councils will be aware of the publicly accessible parks and other public places in their area which dog walkers can use to exercise their dogs without restrictions.

When deciding whether to make requirements or restrictions on dogs and their owners, local councils will need to consider whether there are suitable alternative public areas where dogs can be exercised without restrictions. Councils should consider if the proposed restrictions will displace dog walkers onto other sensitive land, such as farmland or nature conservation areas.

Councils should also consider the accessibility of these alternative sites for those with reduced mobility, including but not limited to, assistance dog users. For example, is there step free access, are there well maintained paths and what transport options are available, including in the early morning and evening.

Councils are also encouraged to publish a list of alternative sites which dog walkers can use to exercise their dogs without restrictions. Both dog walkers and non-dog walkers would then have a clear opportunity to submit their views on whether these alternatives were suitable. This should help minimise the risks of unwanted and unintended displacement effects.

Guidance published by the Department for Environment, Food and Rural Affairs on dog control states that councils must consult dog law and welfare experts e.g vets or animal welfare officers and organisations affected by restrictions before seeking to impose restrictions. Councils may also wish to consider consulting the Kennel Club. Where a Public Spaces Protection Order proposes to restrict dog walking in parks and other commonly used dog walking sites, consideration should be given to how to alert interested people to the proposed restrictions, such as posting notices of the proposed restrictions and consultation details within these spaces.

Consideration must also be given on how any dog walking restrictions being proposed would affect those who rely on assistance dogs, ensuring any prohibition or requirement is compliant with the provisions of Equality Act 2010 or considering what exemptions should apply for assistance dogs.

In relation to dogs and their owners, a Public Spaces Protection Order could, for example:

- exclude dogs from designated areas (e.g. a children's play area in a park);
- require the person in charge of the dog to pick up after it;
- require dogs to be kept on leads in a designated area;
- be framed to apply during specific times or periods (e.g. dogs excluded from a beach from 9am to 6pm, 1 May to 30 September);
- restrict the number of dogs that can be walked by one person at any one time; and
- put in place other restrictions or requirements to tackle or prevent any other activity that is considered to have a detrimental effect on the quality of life of those in the locality, or is likely to have such an effect.

Councils should also consider whether alternative options are available to deal with problems around irresponsible dog ownership or dogs being out of control. It may be that if there are local problems with specific individuals allowing their dogs to stray or run out of control for which one of the other available powers, such as the Community Protection Notice, may be more appropriate. The Department for Environment, Food and Rural Affairs has produced detailed guidance in the form of a practitioner's guide on the range of tools available to deal with irresponsible dog ownership. Targeted measures and educational days for irresponsible dog owners can bring about real improvements in the behaviour of irresponsible dog owners.

#### **Parish and Town Councils:**

Public Spaces Protection Orders are not available to Parish and Town Councils. Parish and Town Councils wishing to deal with dog control issues should discuss the issue with their principal authority, including whether a Public Spaces Protection Order would provide the means to address the issues being experienced by the local community. If the principal authority is satisfied that the legal tests for the use of the power are met and that it is a proportionate response to the level of harm and nuisance being caused it should consider consulting on putting in place a Public Spaces Protection Order. This ensures a single approach on dog control matters within the local community and avoids the risk of any duplication or conflicting requirements and restrictions being put in place.

**Restricting alcohol:** A Public Spaces Protection Order can be used to restrict the consumption of alcohol in a public space where the relevant legal tests are met. However, such an Order cannot be used to restrict the consumption of alcohol where the premises or its curtilage (a beer garden or pavement seating area) is licensed for the supply of alcohol (other than council operated licenced premises). There are also limitations where a temporary event notice has been given under Part 5 of the Licensing Act 2003, or where the sale or consumption of alcohol is permitted by virtue of permission granted under section 115E of the Highways Act 1980. This is because the licensing system already includes safeguards against premises becoming centres for anti-social behaviour. It would create confusion and duplication if Public Spaces Protection Orders were introduced here.

#### **Groups hanging around/standing in groups/playing games**

It is important that councils do not inadvertently restrict everyday sociability in public spaces. The Public Spaces Protection Order should target specifically the problem behaviour that is having a detrimental effect on the community's quality of life, rather than everyday sociability, such as standing in groups which is not in itself a problem behaviour.

Where young people are concerned, councils should think carefully about restricting activities that they are most likely to engage in. Restrictions that are too broad or general in nature may force the young people into out-of-the-way spaces and put them at risk. In such circumstances, councils should consider whether there are alternative spaces that they can use.

People living in temporary accommodation may not be able to stay in their accommodation during the day and so may find themselves spending extended times in public spaces or seeking shelter in bad weather. It is important that public spaces are available for the use and enjoyment of a broad spectrum of the public, and that people of all ages are free to gather, talk and play games.

**Restricting access:** In the past, Gating Orders have been used to close access to certain public rights of way where the behaviour of some has been anti-social.

A Public Spaces Protection Order can be used to restrict access to a public right of way. However, when deciding on the appropriateness of this approach, the council must consider a number of things, as set out below:

- **Can they restrict access?** A number of rights of way may not be restricted due to their strategic value.
- **What impact will the restriction have?** For instance, is it a primary means of access between two places and is there a reasonably convenient alternative route?
- **Are there any alternatives?** Previously gating was the only option, but it may be possible under a Public Spaces Protection Order to restrict the activities causing the anti-social behaviour rather than access in its totality.

There are also further consultation requirements where access is to be restricted to a public right of way. These include notifying potentially affected persons of the possible restrictions. This could include people who regularly use the right of way in their day to day travel as well as those who live nearby. Interested persons should be informed about how they can view a copy of the proposed order, and be given details of how they can make representations and by when. The council should then consider these representations.

It will be up to the council to decide how best to identify and consult with interested persons. In the past newspapers have been used, but other channels such as websites and social media may now be more effective. Where issues are more localised, councils may prefer to deal with individual households. Or, where appropriate, councils may decide to hold public meetings and discuss issues with regional or national bodies (such as the Local Access Forum) to gather views.

**Duration of a Public Spaces Protection Order:** The maximum duration of a Public Spaces Protection Order is three years but they can last for shorter periods of time where more appropriate. Short-term Orders could be used where it is not certain that restrictions will have the desired effect, for instance, when closing a public right of way, and in such circumstances the council might decide to make an initial Order for 12 months and then review that decision at that point.

At any point before expiry, the council can extend a Public Spaces Protection Order by up to three years if they consider it is necessary to prevent the original behaviour from occurring or recurring. They should also consult with the local police and any other community representatives they think appropriate before doing so.

**Changing the terms of a Public Spaces Protection Order:** A Public Spaces Protection Order can cover a number of different restrictions and requirements so there should be little need to have overlapping orders in a single public space. However, if a new issue arises in an area where an Order is already in force, the council can vary the terms of the order at any time. This can change the size of the restricted area or the specific requirements or restrictions. For instance, a Public Spaces Protection Order may exist to ensure dogs are kept on their leads in a park but, after 12 months, groups start to congregate in the park drinking alcohol which is having a detrimental effect on those living nearby. As a result, the council could vary the Order to deal with both issues. Any proposed variation to an existing Public Spaces Protection Order would require the council to undertake the necessary consultation on the proposed changes.



As well as varying the Order, a council can also seek to discharge it at any time, for instance when the issue that justified the Order has ceased or where the behaviour has stopped or the land ceases to be classified as a public space.

**Penalty on breach:** It is an offence for a person, without reasonable excuse, to:

- do anything that the person is prohibited from doing by a Public Spaces Protection Order (other than consume alcohol – see below); or
- fail to comply with a requirement to which the person is subject under a Public Spaces Protection Order.

A person does not commit an offence by failing to comply with a prohibition or requirement that the council did not have power to include in a Public Spaces Protection Order. A person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

It is not an offence to drink alcohol in a controlled drinking zone. However, it is an offence to fail to comply with a request to cease drinking or surrender alcohol in a controlled drinking zone. This is liable on summary conviction to a fine not exceeding level 2 on the standard scale. If alcohol is confiscated, it can be disposed of by the person who confiscates it.

Depending on the behaviour in question, the enforcing officer could decide that a fixed penalty notice would be the most appropriate sanction. This can be issued by a police officer, a Police Community Support Officer, council officer or other person designated by the council. In making the decision to issue a fixed penalty notice, the officer should consider that if issued, payment would discharge any liability to conviction for the offence. However, payment is not made within the required timescale, court proceedings can be initiated (prosecution for the offence of failing to comply with the Public Spaces Protection Order).

**Appeals:** Any challenge to the Public Spaces Protection Order must be made in the High Court by an interested person within six weeks of it being made. An interested person is someone who lives in, regularly works in, or visits the restricted area. This means that only those who are directly affected by the restrictions have the power to challenge. This right to challenge also exists where an order is varied by a council. Additionally, as with all orders and powers, the making of a PSPO can be challenged by judicial review on public law grounds within three months of the decision or action subject to challenge.

Interested persons can challenge the validity of an Order on two grounds. They could argue that the council did not have power to make the order, or to include particular prohibitions or requirements. In addition, the interested person could argue that one of the requirements (for instance, consultation) had not been complied with.

When the application is made, the High Court can decide to suspend the operation of the Public Spaces Protection Order pending the verdict in part or in totality. The High Court has the ability to uphold the Public Spaces Protection Order, quash it, or vary it.

**Enforcement:** Although Public Spaces Protection Orders are made by the council in an area, enforcement is the responsibility of a wider group. Council officers are able to enforce the restrictions and requirements, as are other groups that they designate, including officers accredited under the community safety accreditation scheme. In addition, police officers and Police Community Support Officers are able to enforce Public Spaces Protection Orders.

## **REPORT Skatepark fencing**

1. The existing fencing round the skatepark is in a poor state and this has been made worse by the removal of bits of the fencing and the gate to allow for construction of the new skatepark.
2. Officers are cognisant that members would not wish to open a new skatepark with rather dilapidated fencing.
3. The Council had budgeted £5000 for the repair and maintenance of the old Skate Park. In the circumstance, this has not been used.
4. Officers recommend that this money be used to pay for new fencing.

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