

AMENDED APPENDIX 2

This is Appendix replaces Appendix 2, which was originally published for the Cabinet meeting of 14 July 2020.

An amendment has been made to Schedule 2 and Schedule 3 as indicated below, and the Amended Appendix 2 published and circulated ahead of the Cabinet meeting.

Amendments

Schedule 2

Delete

East Cemetery (map 30)

North Cemetery (map 31)

West Cemetery (map 32)

Schedule 3

Insert

East Cemetery (map 30)

North Cemetery (map 31)

West Cemetery (map 32)

AMENDED APPENDIX 2

DARLINGTON BOROUGH COUNCIL

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014

PUBLIC SPACES PROTECTION ORDER – DOG CONTROL Number 1 of 2020

Notice is hereby given that Darlington Borough Council (“the Council”) in exercise of its powers under sections 59 and 72 of the Anti-Social Behaviour, Crime and Policing Act 2014 (“the Act”) being satisfied that the conditions set out in section 59 of the Act have been met, make the following Order:-

PRELIMINARY

1. This Order applies to all land which is in the administrative area of the Council and which is open to the air (which includes land that is covered but open to the air on at least one side) and to which the public are entitled or permitted to have access (with or without payment), with the exception of land that is placed at the disposal of the Forestry Commissioners under section 39(1) of the Forestry Act 1967. A map of this area appears at Schedule 1.
2. The Order may be cited as the Darlington Borough Council Public Spaces Protection Order – Dog Control and shall come into force on 7 September 2020 for the duration of 3 years. At any point before the expiry of this three year period the Council can extend the Order by up to three years if they are satisfied on reasonable grounds that this is necessary to prevent the activities identified in the Order from occurring or recurring or to prevent an increase in the frequency or seriousness of those activities after that time.
3. The activities identified in paragraph 6 below have been carried out in public places within the Council’s area and have had a detrimental effect to the quality of life of those living in the locality.

4. The Council is satisfied that the conditions set out in sections 59 and 72 of the Act have been met and that it is, in all the circumstances, expedient to make this Order in order to seek to reduce the detrimental effect on the quality of life of those in the locality caused by the activities listed in paragraph 6 below.
5. The effect or likely effect of these activities is, or is likely to be, of a persistent or continuing nature, such as to make these activities unreasonable, and therefore justifies the restrictions imposed by this Order.
6. The activities referred to are:
 - Dog fouling
 - Failure to put dogs on leads when requested
 - Failure to keep dogs on leads in prescribed areas
 - Failure to exclude dogs entirely from prescribed areas
7. The Council has had particular regard to the rights and freedoms set out in Article 10 (right of freedom of expression) and Article 11 (right of freedom of assembly) of the European Convention on Human Rights and has concluded that the restrictions on such rights and freedoms imposed by this Order are lawful, necessary and proportionate.
8. For the purposes of this Order a person who habitually has a 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.
9. For the purposes of this Order each of the following is a "Prescribed Charity"
 - (i) Dogs for the Disabled (registered charity number 700454)
 - (ii) Support Dogs (registered charity number 1088281)
 - (iii) Canine Partners for Independence (registered charity number 803680)

10. THE FOULING OF LAND BY DOGS

(1) If a dog defecates at any time on land to which this Order applies and a person who is in charge of the dog at that time fails to remove the faeces from the land forthwith, that person shall be guilty of an offence unless —

(a) he has a 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.

(2) Nothing in this article applies to a person who

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

(b) has a disability which affects his mobility, manual dexterity, physical coordination or ability to lift, carry or otherwise move everyday objects, in respect of a dog trained by a prescribed charity and upon which he relies for assistance.

(3) For the purposes of this article —

(a) placing the faeces in a receptacle on the land which is provided for the purpose, or for the disposal of waste, shall be a sufficient removal from the land; and

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

11. DOGS ON LEADS BY DIRECTION

(1) In this Order "an authorised officer of the Council" means an employee of the Council who is authorised in writing by the Council for the purpose of giving directions under this Order.

(2) A person in charge of a dog shall be guilty of an offence if, at any time, on any land to which this Order applies, he does not comply with a direction given to him by an authorised officer of the Council to put and keep the dog on a lead, unless —

(a) he has a 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.

(3) For the purposes of this article an authorised officer of the Council may only give a direction under this Order to put and keep a dog on a lead if such restraint is reasonably necessary to prevent a nuisance or behaviour by the dog likely to cause annoyance or disturbance to any other person [on any land to which this order applies] or the worrying or disturbance of any animal or bird.

12. DOG EXCLUSION AREAS

(1) This section of the Order only applies to the land specified in Schedule 2.

(2) A person in charge of a dog shall be guilty of an offence if, at any time, he takes the dog onto, or permits the dog to enter or to remain on, any land to which this section of the Order applies unless —

(a) he has reasonable excuse for doing so; or

(b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his doing so.

(3) Nothing in this article applies to a person who —

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

(b) is deaf, in respect of a dog trained by Hearing Dogs for Deaf People (registered charity number 293358) and upon which he relies for assistance; or

(c) has disability which affects his mobility, manual dexterity, physical coordination or ability to lift, carry or otherwise move everyday objects, in respect of a dog trained by a prescribed charity and upon which he relies for assistance.

13. DOGS ON LEADS

- (1) This section of the Order only applies to the land specified in Schedule 3.
- (2) A person in charge of a dog shall be guilty of an offence if, at any time, on any land to which this section of the Order applies he does not keep the dog on a lead, unless —
- (a) he has a 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.

EFFECT OF FAILING TO COMPLY WITH THIS ORDER

15. It is an offence for a person without reasonable excuse to engage in an activity that is prohibited by this Order.
16. A person guilty of any offence listed above, in accordance with section 67 of the Act, is liable on summary conviction to a fine not exceeding level 3 on the standard scale (£1000). The full text of section 67 of the Act is set out in Schedule 4 to this Order.

FIXED PENALTY NOTICES

17. A Police Officer, Police Community Support Officer or Authorised Person from the Council may issue a fixed penalty notice to any person he or she believes has committed an offence under section 67 of the Act. The person will then have 14 days to pay a fixed penalty of £100. If payment is received within 14 days they will not be prosecuted.

CHALLENGING THIS ORDER

18. Any challenge to this Order must be made in the High Court by an interested person within six weeks of it being made. There is further detail regarding this in Schedule 5 to this Order.

GIVEN under the common seal of
The Council of the Borough of Darlington

On the
..... day of 2020

THE COMMON SEAL of the
Council of the Borough of Darlington
was hereunder affixed in the presence of :-

SCHEDULE 2

Albert Hill Park - Enclosed Play Area (map 1)
Alderman Crooks Park – Enclosed Play Area (map 2)
Bensham Park – Enclosed Play Area (map 3)
Brinkburn Dene - Enclosed Play Area (map 4)
Broken Scar Sand Pit Area (map 5)
Bushell Hill Park (whole site) (map 6)
Branksome Park – Enclosed Play Area (map 7)
Darrowby Drive – Enclosed Play Area (map 8)
Eastbourne Park – Enclosed Play Areas (map 9)
Eastbourne Sports Complex (map 10)
Eastmount Road - Enclosed Play Area (map 11)
Emley Moor Road Park – Enclosed Play Area (map 12)
Ettersgill Park – Enclosed Play Area (map 13)
Fryer Crescent – Enclosed Play Area (map 14)
Grass Street – Enclosed Play Area (map 15)
Green Park – Enclosed Play Area (map 16)
Harrowgate Farm - Enclosed Play Area (map 17)
Haxby Road and Station Road, Middleton St George – Enclosed Play Areas (map 18)
Hurworth Community Centre – Enclosed Play Area (map 19)
Lascelles Park – Enclosed Play Area (map 9)
North Lodge Park – Enclosed Play Area, MUGA and Bowling Green (map 20)
North Park – Enclosed Play Area and Bowling Green Centre (map 21)
Pensbury Street – Enclosed Play Area (map 22)
Red Hall - Headingley Crescent Enclosed Play Area (map 23)
South Park – Enclosed Play Area, Skate Area and Muga (map 24)
Springfield Park – Enclosed Play Area (map 25)
Stanhope Park – Tennis Courts (map 26)
West Auckland Park – Enclosed Play Area (map 27)
Bishopton Play Area (map 28)
Brinkburn Dene – Tennis Dene (map 29)

SCHEDULE 3

Albert Hill Kick About Area (map 1)
Arnold Road Allotments (map 10)
Brinkburn Dene (Play Dene) (map 4)
Broken Scar Play Area (unfenced) (map 5)
Cockerton Allotments (map 33)
Darlington Memorial Hospital – hospital grounds excluding residential area (map 34)
Dodmire Allotments (map 9)
Drury Street Allotments (map 35)
Eastbourne Sports Complex – parking area and footpath accessing site (map 10)
Emley Moor Road Play Area (map 12)
Field Street Allotments (map 15)
Green Park Play Area (unfenced) (map 16)
Honeypot Lane Allotments (map 36)
Lascelles Allotments (map 9)
Red Hall Football Pitch (map 23)
Salters Lane North Allotments (map 37)
Salters Lane South Allotments (map 3)
South Park – all formal areas except the show field (map 24)
Springwell Allotments (map 38)
Station Road Play Area and Water Park, Middleton St George (map 18)
Town Centre (map 39)
West Auckland Road Allotments (map 33)
West Park Play Area (unfenced) (map 40)
Parish Hall Lane and St Michaels Crescent Parks, Heighington (map 41)
Sadberge Play Area (map 42)
Skerne Green Play Area (map 43)
East Cemetery (map 30)
North Cemetery (map 31)
West Cemetery (map 32)

SCHEDULE 4

Text of section 67 of the Act

(1) It is an offence for a person without reasonable excuse—

(a) to do anything that the person is prohibited from doing by a public spaces protection order, or

(b) to fail to comply with a requirement to which the person is subject under a public spaces protection order.

(2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) A person does not commit an offence under this section by failing to comply with a prohibition or requirement that the local authority did not have power to include in the public spaces protection order.

(4) Consuming alcohol in breach of a public spaces protection order is not an offence under this section (but see section 63).

SCHEDULE 5

Challenging this Order (Section 66 of the Act)

1. Any challenge to this 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 right to challenge also applies where this Order is varied by the Council.
2. Interested persons can challenge the validity of this Order on two grounds: (1) that the Council did not have the power to make the Order, or to include particular prohibitions or requirements; or (2) that one of the requirements of the legislation has not been complied with.
3. When an application is made the High Court can decide to suspend the operation of the Order pending the Court's decision, in part or in totality. The High Court has the ability to uphold the Order, quash it or vary it.

