



NORTHAMPTON
BOROUGH COUNCIL

CABINET REPORT

Report Title	CONSULTATION ON A PROPOSED VARIATION TO THE NORTHAMPTON BOROUGH COUNCIL PUBLIC SPACES PROTECTION ORDER 2020
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AGENDA STATUS: PUBLIC

Cabinet Meeting Date:	16 December 2020
Key Decision:	Yes
Within Policy:	Yes
Policy Document:	No
Directorate:	Customers & Communities
Accountable Cabinet Member:	Cllr Mike Hallam
Ward(s)	Upton

1. Purpose

- 1.1. To seek authority for the Director of Customers and Communities to commence the necessary statutory consultation, publicity and notification with regard to a proposal to vary the Northampton Borough Council Public Spaces Protection Order 2020 (“the PSPO”), a copy of which is appended to this report as Appendix 1, in order to create a prohibition against dogs being walked off lead within the area of Upton Country Park known as “Phase 2”, as required by section 72 of the Anti-Social Behaviour, Crime & Policing Act 2014 (“the Act”).

2. Recommendations

That Cabinet:

- 2.1. Delegates to the Director of Customers and Communities the authority to undertake the required statutory consultation, publicity and notification as required by section 72 of the Act with regard to a proposal to vary the PSPO so as to create a prohibition against dogs being walked off lead within the area

of Upton Country Park known as “Phase 2”, which is outlined in red on the plan appended to this report as Appendix 2.

- 2.2. Resolves to receive a further report, once the necessary statutory consultation, publicity and notification has been carried out, which will include the responses received in response to those processes, in order to decide whether to approve or reject the proposed variation to the PSPO.

3. **Report Background**

- 3.1. Chapter 2 of Part 4 of the Act provides Local Authorities and the Police with powers to tackle anti-social behaviour and provide better protection for victims.
- 3.2. PSPOs are designed to stop all individuals, or a specific group of persons, committing anti-social behaviour in a public place and so can lawfully prohibit specific activities from taking place in a specific public place. They provide Councils with a flexible power to implement local restrictions to address a range of anti-social behaviour issues in public places in order to prevent future problems, protecting those who live, work or visit that area from the detrimental effects of such behaviour.
- 3.3. PSPOs can be varied once they have been made, provided the statutory criteria for doing so is satisfied with reference to evidence. The first criteria that must be satisfied when considering whether to either make or vary a PSPO are that;
- a) activities carried on in a public place within the authority's area **have** had a detrimental effect on the quality of life of those in the locality, or
 - b) it is likely that activities **will** be carried on in a public place within that area and that they **will** have such an effect.
- 3.4. The second criteria that must be satisfied with reference to evidence is that the effect, or likely effect, of the activities that have or will take place;
- (a) is, or is likely to be, of a persistent or continuing nature,
 - (b) is, or is likely to be, such as to make the activities unreasonable, and
 - (c) justifies the restrictions imposed by the notice.
- 3.5. In advance of any decision being made to vary a PSPO, there is a statutory requirement for a Council to undertake, as a minimum, the “necessary” consultation, publication and notification.
- 3.6. The “*necessary consultation*” means consulting with;
- (a) The chief officer of police, and the local policing body for the area proposed to be subject to the variation,

- (b) Whatever community representatives the local authority thinks it appropriate to consult and
 - (c) The owner or occupier of land within the proposed area;
- 3.7. “*The necessary publicity*” means publishing the text of the proposed variation before by publishing it on the Council’s website and “*the necessary notification*” means notifying the following authorities of the proposal;
- (a) the Parish Council or community council (if any) for the area that includes the area to be restricted and
 - (b) in the case of a variation to an Order made by a District Council, such as Northampton Borough Council, the County Council (if any) for the area that includes the area to be restricted.
- 3.8. PSPOs can be made for a maximum of three years, even if they are varied and new prohibitions added or existing ones removed during that time.
- 3.9. Breach of any prohibition in a PSPO is a criminal offence which can result in the issuing of a Fixed Penalty Notice (“FPN”) of no more than £100 and failure to pay that can be the subject of a prosecution resulting in a potential maximum fine of £1,000 on conviction. Enforcement of a PSPO can be undertaken by Council Officers, any person designated by a Council for the purpose of issuing FPNs, and Police Constables.

4. **Issues**

- 4.1. The statutory requirements identified at paragraph 3.2 and 3.3 above must be satisfied with reference to evidence, even with regard to the likelihood that an activity **will** take place and that the detrimental impact of that activity **will** be caused.
- 4.2. The Council has been informed that several incidents of dogs off leads attacking the sheep in the field adjoining the Phase 2 area of Upton Country Park have taken place in 2020, resulting in serious and fatal injuries to livestock. This is in spite of signs located in Upton Country Park stating that dogs must be kept on leads at all time whilst being walked in the “Phase 2” area of the Park. However, this prohibition is effectively legally unenforceable at present. The most effective method of lawfully enforcing this prohibition would be to include it as a variation to the existing PSPO made earlier this year.
- 4.3. The evidence of the attacks on livestock which have taken place in 2020 has satisfied officers that there has been a detrimental and unreasonable effect on the quality of life of the livestock’s owner and that this has been caused solely by the fact that dogs have been walked off lead in Upton Country Park. In addition, it is thought likely that if any Park user, including dog walkers, witnesses any future attack, this will undoubtedly have a detrimental effect upon them.

- 4.4. The only way to ensure that further dog attacks will not take place is by prohibiting all dogs being walked off lead in the “Phase 2” area of the Park, as there would be no practical or enforceable way for the Council to ensure that any dog permitted to be walked off lead was appropriately trained to do so around sheep without attacking them.
- 4.5. The annual lambing season will commence early in 2021 and that is when the flock at Upton Country Park will be even more vulnerable to attacks by dogs. As a result, it is considered to be likely that if dogs continue to be walked off lead in the Park, it is only a matter of time before there are further attacks by dogs on livestock, due to the inability of the Council to ensure that only appropriately trained dogs are walked off lead. This satisfies the “persistent or continuing” aspect of the second limb of the statutory test as set out at paragraph 3.3 above. Officers consider that at the very least the detrimental effect suffered by the owner of the sheep justifies the proposed prohibition.
- 4.6. The Council will consult the organisations and persons identified at paragraph 6.6 (“External consultees”) on page 4 of this report for a period of 6 weeks, in compliance with the “*necessary consultation*” and “*necessary notification*” requirements identified at paragraphs 3.5 and 3.6 above. Officers believe that in doing so, they will have invited comments from all of the people likely to be affected by this proposed variation or organisations that are likely to represent those people. Responses can be submitted on-line via a Survey Monkey questionnaire, a copy of which is appended to this report as Appendix 3.
- 4.7. A copy of the proposed varied PSPO will also be published on the Council’s website and make clear that the proposed variation is the addition of the new prohibition regarding dogs being walked off lead in the “Phase 2” area of Upton Country Park.

5. Choices (Options)

- 5.1. Cabinet can decide to authorise the Head of Customers and Communities to carry out the “necessary” consultation, publicity and notification in relation to the proposed variation to the PSPO, as required by the Act, in order to ensure that dogs must be kept on their lead at all times when in the Upton Country Park “Phase 2” area. Following the consultation, publicity and notification exercise, a report will be brought back to Cabinet detailing any responses received with a view to a decision being made whether to vary the PSPO as proposed or not.
- 5.2. Cabinet can decide not to authorise the Head of Customer and Communities to carry out the “necessary” consultation, publicity and notification as required by the Act. However, Officers consider that this will have a serious and detrimental impact on the farmer in question, as he has a lawful right to allow his livestock to graze in the “Phase 2” area of Upton Country Park. There is also the potential for park users and dog walkers to suffer a detrimental impact arising from the walking of dogs off lead in that area, given the likely continued presence of dogs that are not appropriately trained to be off lead around grazing livestock.

6. Implications (including financial implications)

6.1 Policy

6.1.1 The approach supports the multi-agency Countywide Anti-Social Behaviour Policy that Northampton Borough Council is signed up to.

6.2. Resources and Risk

6.2.1. No issues identified at this stage.

6.3. Legal

6.3.1. The statutory tests that must be satisfied with evidence in support are set out in paragraphs 3.2 and 3.3 above. It is considered that there is sufficient evidence of sheep attacks on dogs in Upton Country Park in support of the proposed variation and that the tests are met in this case.

6.3.2. There is no statutory requirement to consult the public on a general basis for a prescribed period of time for every single proposed PSPO or variation. The appropriate consultees should be chosen by having regard to the category of persons likely to be affected by the proposal. The 2020 Borough wide PSPO proposal was clearly capable of affecting all of the residents of Northampton. This proposed variation is arguably only capable of affecting Upton Country Park users and dog walkers specifically, therefore Officers consider that a targeted consultation exercise would be a more sensible approach to take here.

6.3.3. Any consultation responses submitted to the Council must be considered when the decision whether to approve the variation is made, but there is no legal duty to take them into account. However, if the decision is made to vary the PSPO as proposed, any person who regularly visits Upton Country Park would be entitled to challenge the validity of the variation within 6 weeks of it being made, but **only** on the following grounds;

- a) that the Council did not have power to make the variation or to include the particular prohibition imposed by the varied PSPO or
- b) that a statutory requirement under the Act was not complied with in relation to the making of the variation.

6.4 Equality and Health

6.4.1. No issues identified at this stage.

6.5. NBC Internal Consultees

- Borough Secretary.
- Community Safety Partnership Manager.
- Cabinet Member for Environment.

- Environmental Health and Licensing Manager.

6.6. Proposed External Consultees

- The owner of the sheep with the right to graze on the “Phase 2” area of Upton Country Park.
- Upton Country Park users – Signs will be displayed around the park inviting responses to the On-Line survey monkey questionnaire.
- Upton Parish Council
- Hunsbury Meadows Parish Council
- Marina Park Residents Association
- Community Spaces Northampton
- St James’ Residents Association
- Upton Meadows Residents Association
- Friends of West Hunsbury Park
- Northamptonshire County Councillor (Sixfields) Pinder Chauhan
- Northamptonshire Police
- Northamptonshire County Council - corporately

6.7. How the Proposals deliver Priority Outcomes

6.7.1 One of the Council’s priorities is “invest in safer, cleaner neighbourhoods” and if varied as proposed, the PSPO has the potential to contribute towards this priority.

6.8. Other Implications

6.8.1 None identified at this stage.

7. Background Papers

7.1. Anti-Social Behaviour, Crime and Policing Act 2014: Reform of Anti-Social Behaviour Powers Statutory Guidance for Frontline Professionals - Pages

Appendices

- Appendix 1 – Current PSPO 2020.
- Appendix 2 - Map of Upton Country Park “Phase 2” area.

- Appendix 3 - Proposed Survey Monkey consultation questionnaire.

**Director of Marion Goodman
Communities Customers &**

Appendix 1 Current PSPO 2020



Northampton Borough Council Public Spaces Protection Order 2020

Northampton Borough Council ("the Council") makes the following Public Spaces Protection Order under section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 ("the Act").

The land described by the maps at Appendices 1 and 1A , being land in the area of the Council, is land to which the Act applies and will be protected by this Order.

The Order may be cited as the Northampton Borough Council Public Spaces Protection Order 2020.

1. Any person is prohibited, at any time when within the area outlined in black at Appendix 1 of this Order, from ingesting, injecting, smoking or otherwise using intoxicating substances. Intoxicating substances are defined for the purposes of this Order as substances with the capacity to stimulate or depress the central nervous system, including illegal drugs or psychoactive substances (so-called "legal highs"), but excluding alcohol, tobacco or prescription medication.
2. Persons within the area outlined in black at Appendix 1 will not have any item that can be used to assist in the taking of intoxicating substances defined in paragraph 1 above. This includes any device for smoking substances other than e-cigarettes. It also includes needles, except for those packaged and sealed by the manufacturer and stored in a hard case.
3. Persons within the area indicated outlined in black at Appendix 1 will not have in their possession any open containers of alcohol in any public place open to the air.
4. No person shall urinate or defecate in any public place open to the air in the area outlined in black at Appendix1. This does not include public toilets.
5. No person shall spit in any public place open to the air in the area outlined in black at Appendix1.
5. Persons who are in charge of a dog must remove its faeces from the land from land outlined in black at Appendix 1 forthwith unless:
 - a. there is reasonable excuse for failing to do so (not being in possession of a bag to remove the faeces is not a reasonable excuse); 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.

7. A person in charge of a dog on land within the following areas only, within the larger area outlined in black at Appendix 1, must keep that dog on a lead:
 - a. all children's play areas in public parks,
 - b. all cemeteries and
 - c. Northampton town centre (as outlined in black at Appendix 1A).
8. Any person who fails to comply with the prohibition at paragraph 3 of this Order without reasonable excuse commits an offence under section 63 of the Act if they then fail to cease drinking alcohol and dispose of or surrender any open containers of alcohol in their possession upon request by a Police Constable ("a Constable") or a person duly authorised in writing by Northampton Borough Council ("An Authorised Officer").
9. This Order is subject to the exemptions at Appendix 2.
10. A person committing an offence under Section 63 of the Act may be issued with a Fixed Penalty Notice ("FPN") of £100.00 by a Constable or an Authorised Person, in accordance with section 68 of the Act, payment of which will discharge liability to conviction for that offence
11. A person guilty of an offence under Section 63 of the Act is liable on summary conviction to a fine not exceeding level 2 on the standard scale (currently £500). No proceedings may be taken for any offence before the end of the 14 day period following the date of issue of an FPN. The person may not be convicted of the offence if the FPN is paid before the end of that period.
12. Any person who fails to comply with the prohibition at paragraph 1 of this Order without reasonable excuse commits an offence under section 67 of the Act if they then fail to comply with a reasonable request by a Constable or an Authorised Officer to;
 - a. surrender any open containers of intoxicating substances in their possession,
 - b. surrender any item used to assist in the taking of any intoxicating substance or
 - c. secure safe disposal of any needles in their possession not sealed and stored as set out in Paragraph 2 of this Order.
13. Any person who fails to comply with any prohibition at paragraphs 4,5,6 and 7 of this Order without reasonable excuse also commits an offence under section 67 of the Act.
14. A person committing an offence under Section 67 of the Act may be issued with a Fixed Penalty Notice ("FPN") of £100.00 by a Constable or an Authorised Person, in accordance with section 68 of the Act, payment of which will discharge liability to conviction for that offence.
15. A person guilty of an offence under Section 67 of the Act is liable on summary conviction to a fine not exceeding level 2 on the standard scale (currently £500). No proceedings may be taken for any offence before the end of the 14 day period following the date of issue of an FPN. The person may not be convicted of the offence if the FPN is paid before the end of that period.

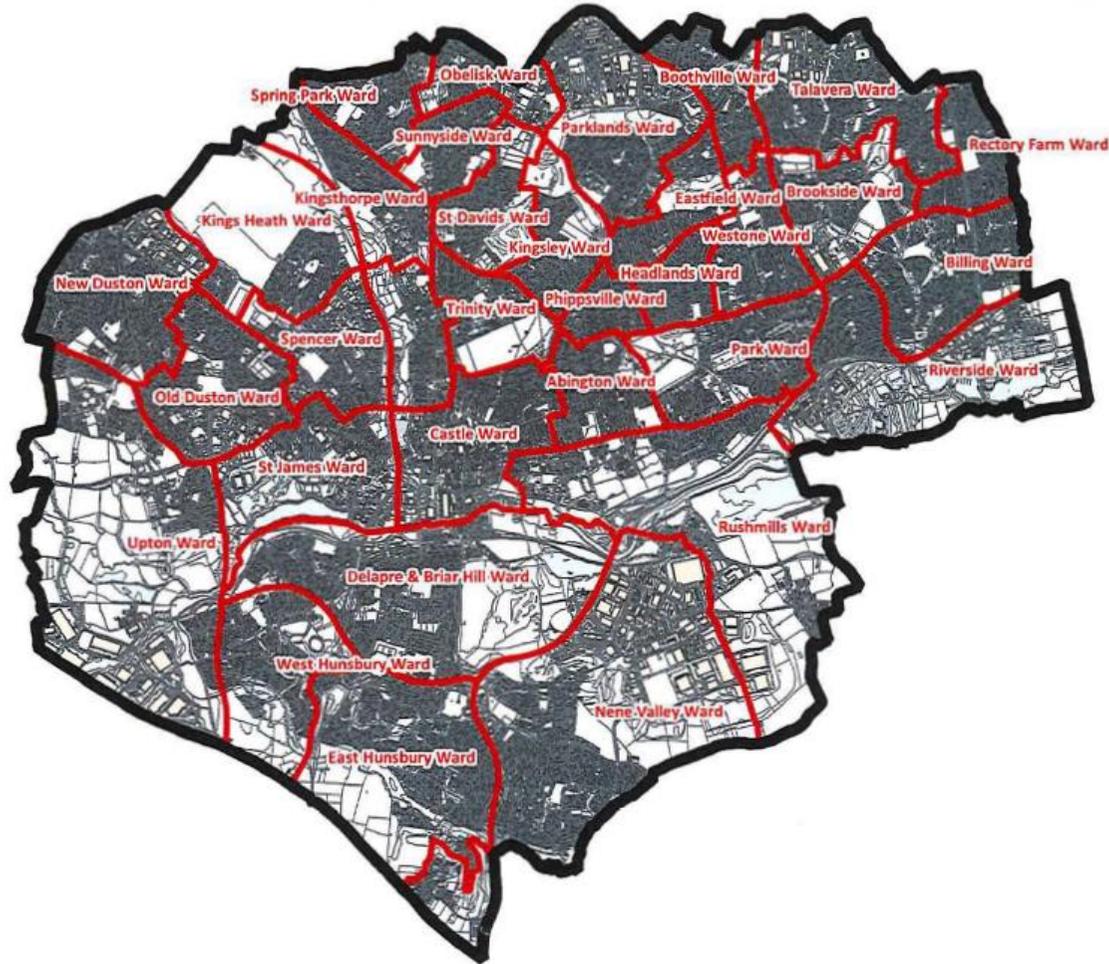
16. In consulting upon the prohibitions within this Order and upon making it, the Council has had particular regard to the rights of freedom of expression and freedom of assembly as set out in Articles 10 and 11 of the European Convention on Human Rights
17. This Order shall come into force on 18th September 2020 and remain in place for a period of three years.

Dated: 18th September 2020



Signed

Francis Fernandes
Borough Secretary
Northampton Borough Council



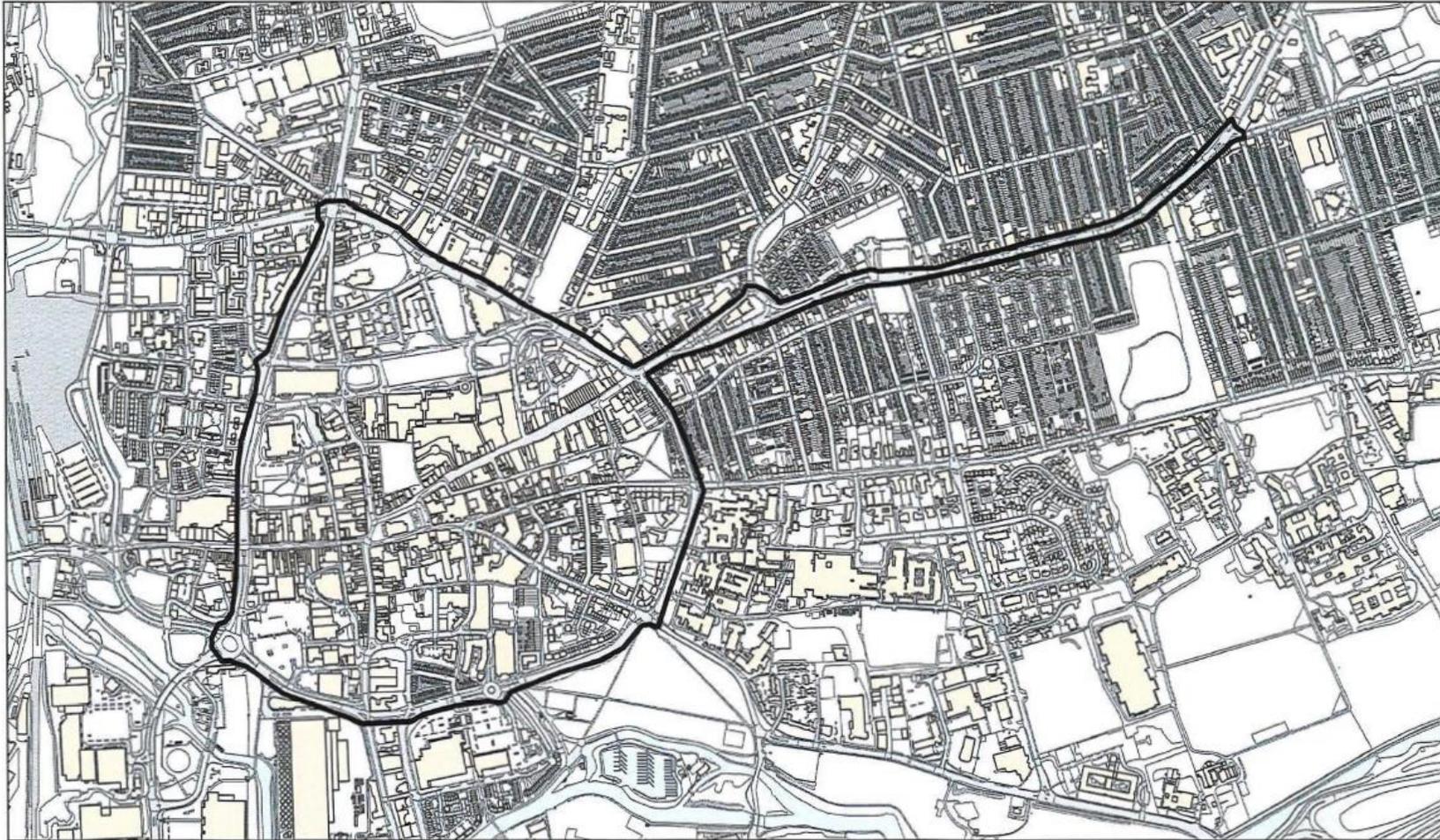
NORTHAMPTON
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Title: **Appendix 1**

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Scale: 1:68,417



Title: **Appendix 1A**

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APPENDIX 2

Exemptions

1. Nothing in Paragraph 3 of this Order, (relating to the consumption of alcohol in a public place open to the air) shall apply to:

- (a) Premises authorised by a premises licence to be used for the supply of alcohol
- (b) Premises authorised by a club premises certificate to be used by the club for the supply of alcohol;
- (c) A place within the curtilage of premises within paragraph (a) or (b);
- (d) Premises which by virtue of Pt 5 of the Licensing Act 2003 may at the relevant time be used for the supply of alcohol or which, by virtue of that Part, could have been so used within 30 minutes before that time;
- (e) A place where facilities or activities relating to the sale or consumption of alcohol are at the relevant time permitted by virtue of a permission granted under s 115 of the Highways Act 1980 (highway-related uses)

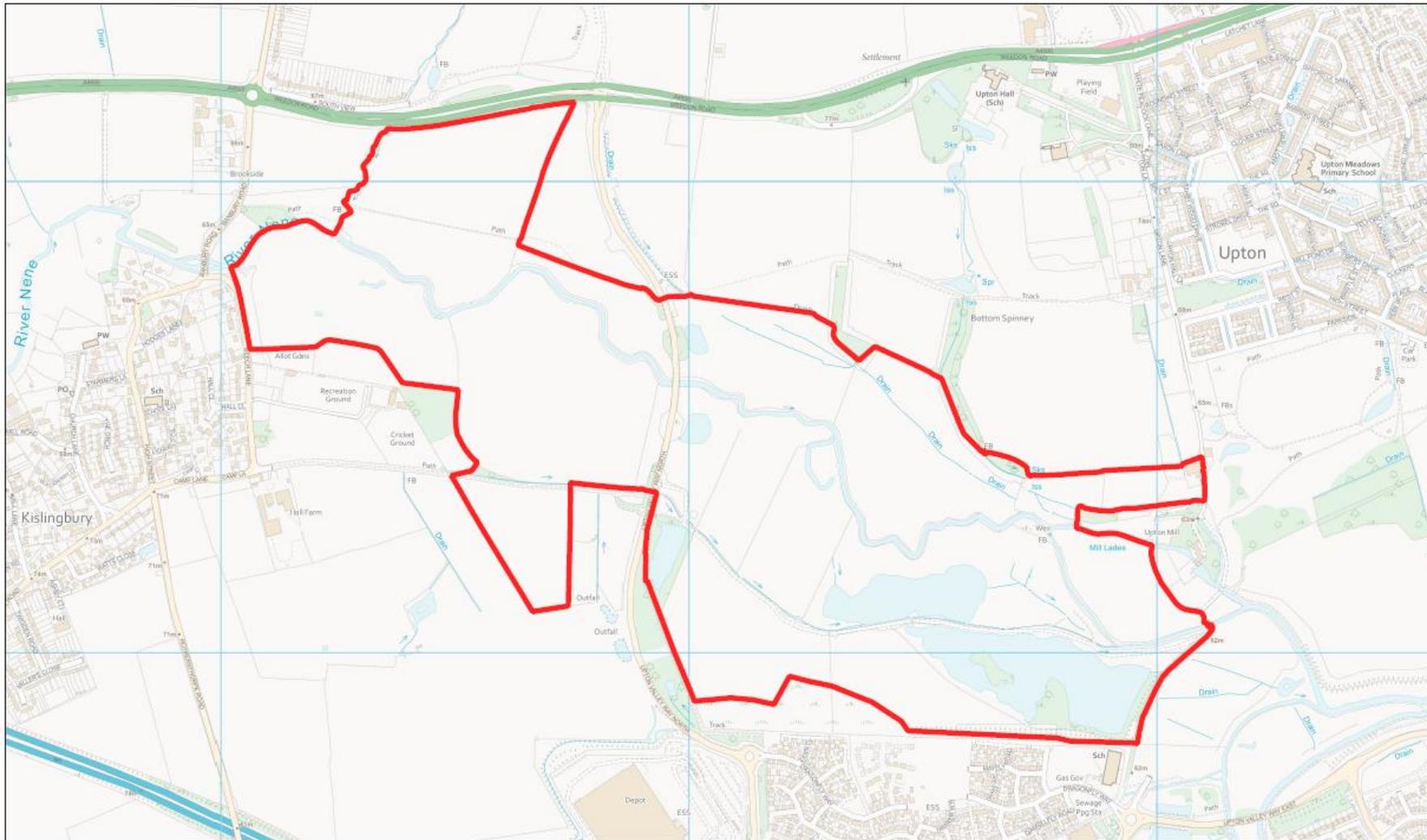
2. A prohibition in the Order on consuming alcohol does not apply to council-operated licensed premises or land:

- (a) When the premises or land are being used for the supply of alcohol; or
- (b) Within 30 minutes of the end of a period during which the premises have been used for the supply of alcohol.

3. Nothing in Paragraph 5 and 6 (removal of dog faeces & dogs on leads) shall apply 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 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.

APPENDIX 2 – Map of Phase 2 Upton Country Park



Title: **Upton Country Park - Phase 2**

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Drawn by: -----

APPENDIX 3 – Proposed Survey Monkey Questionnaire

PSPO - Dogs on Leads in Upton Country Park

Following some horrific dog attacks on sheep within the Phase 2 area of Upton Country Park (consult map for exact location) we are looking at an amendment to the Northampton Borough Council Public Spaces Protection Order 2020 (PSPO) to enforce the current informal requirement to keep dogs on leads in this area in order to protect lawfully grazing livestock.

You can request a paper copy by emailing pspo@northampton.gov.uk or telephone 07826 993847.

Thank you for your time.

1. My post code is

2. Do you walk dog(s) in the area of Upton Country Park Phase 2?

- Yes and I always keep my dog(s) on the lead in this area
- Yes and I allow my dog(s) off the lead
- No I do not walk a dog in that area

3. How often do you use Phase 2 of Upton Country Park?

- Daily
- Several times a week
- Once or twice a week
- Once or twice a month
- Rarely
- Never been there

4. Do you think it is reasonable to enforce the requirement to have dogs on leads at all times in the Phase 2 area of Upton Country Park?

Yes

No

I have no opinion

5. Do you have any comments to make about this proposed amendment to the PSPO?

