

Classification: Public

Key Decision: No

Gravesham Borough Council

Report to: Full Council
Date: 01 December 2020
Reporting officer: Melanie Norris, Director (Communities)
Subject: Dog Fouling – Public Space Protection Order

Purpose and summary of report:

To seek approval to replace the expired Public Space Protection Order (PSPO) for Dog Fouling with a new PSPO for a further three years.

Recommendations:

1. That Members agree to the making of the new Public Space Protection Order (PSPO) for dog fouling which will last for a period of three years and instruct officers to proceed with the same.
2. That Members approve the deletion of paragraph 1.13A.14 within Annex 1.13 of the Constitution relating to the delegation of making of PSPOs, as set out in Section 4 of this Report.

1. Background

- 1.1 The Antisocial Behaviour Crime and Policing Act 2014 came into force on 20 October 2014 and included provisions for councils to make Public Space Protection Orders (PSPOs) for the purpose of stopping individuals or groups committing anti-social behaviour, like failing to pick up after their dogs, in a public space.
- 1.2 A PSPO 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:
 - 1.2.1 has had, or is likely to have, a detrimental effect on the quality of life of those in the locality;
 - 1.2.2 is, or is likely to be, persistent or continuing in nature;
 - 1.2.3 is, or is likely to be, unreasonable; and
 - 1.2.4 justifies the restrictions imposed.
- 1.3 Prior to the 2014 Act, councils were able to utilise powers under the Clean Neighbourhoods and Environment Act 2005 to make Dog Control Orders (DCO) for the purposes, amongst other things, of dealing with dog fouling. The council had made a DCO for dog fouling which came into force on 11 April 2011.

- 1.4 With effect from 20 October 2014 Councils could no longer make new DCOs and any existing ones only remained in force for 3 years. After this time they automatically became Public Spaces Protection Orders as long as there were no changes to the Order. Consequently, Gravesham's Dog Control Order for dog fouling transitioned into a dog fouling PSPO, following the necessary review and approval process, with effect from 20 October 2017.
- 1.5 The PSPO covers the whole borough with the exception of exempt land (i.e. land used for agriculture, rural common land, Jeskyns Park - as this is Forestry Commission land, highways with a speed limit of 50mph or more, and most private land) and makes it a legal requirement for the person in charge of a dog to pick up after them and remove any fouling from site to dispose of appropriately.
- 1.6 The PSPO expired on 19 October 2020 and if the council wishes to continue to be able to enforce against those that do not pick up after their dog then the PSPO needs to be replaced by a new PSPO as there are no alternative provisions in law to facilitate this.

2. Current Dog Fouling Service

- 2.1 The primary mechanism for the public to report incidents of dog fouling is via an online form on the council's webpage; designed to provide them with the ability to submit reports at any time and from any internet enabled device. The public can however also report dog fouling by phoning Customer Services who then enter the information into the online reporting form.
- 2.2 The following numbers of reports were received :
 - 2.2.1 In 2017/18 - 122 complaints of dog fouling were received.
 - 2.2.2 In 2018/19 - 110 complaints of dog fouling were received.
 - 2.2.3 In 2019/20 - 46 complaints of dog fouling were received, 4 of which identified the owner
 - 2.2.4 To the end of September in 2020 – 18 complaints of dog fouling were received, 3 of which identified the owner.
- 2.3 Where the owner is identified in a report to the council by a member of the public, the Environmental Protection Team contact the person reporting it to confirm that the person in charge of the dog will be contacted. The person reporting the matter is asked to report the person again if they witness them not picking up after the dog again. The dog owner is contacted in writing to remind them of their responsibility to pick up after their dog. None have been reported again for not having picked up after their dog.
- 2.4 All notifications of dog fouling made to the council are also passed to the Waste Management Unit to arrange for the cleansing of the pavement if necessary.
- 2.5 Formal enforcement is by way of a £75 Fixed Penalty Notice (FPN) or prosecution.
- 2.6 Currently, dog fouling is enforced by the Safer Place Officers (SPO) whilst on patrol. No FPNs have been served since the current PSPO was made. It is considered that this, along with the significant reduction in reports to the council demonstrates that the PSPO is effective and that more dog walkers consider that it is socially irresponsible not to pick up after their dog.

- 2.7 The SPOs have witnessed three people not picking up after their dog in the last three years. All three were approached and, as the guidance requires, given the opportunity to pick up after the dog. All three did and advice was given. A fourth person did pick up after the dog but then threw the bag over a wall. The SPO served a fixed penalty notice for littering.
- 2.8 Whilst the responsible dog owners do pick up after their dogs and the number of dog fouling complaints has reduced significantly on previous years; it is considered that this is a clear example of the effectiveness of the PSPO and clear justification for the need for it to remain in place.
- 2.9 Dog fouling remains a matter of concern for the public, is unsightly, and presents a public health risk.
- 2.10 Dog fouling and irresponsible dog ownership are ongoing and repeated concerns of community groups and parish councils, and an area where the council is expected to be able to take action through both education and enforcement.

3. Public and Stakeholder Consultation

- 3.1 Following approval from Management Team on 22 September 2020, officers undertook the necessary stakeholder and public consultation in accordance with the requirements of The Antisocial Behaviour Crime and Policing Act 2014 between 23 September 2020 and 07 October 2020. The results of the consultation were reported to Management Team on 27 October 2020.
- 3.2 The following statutory consultees were consulted directly – Chief Inspector at Kent Police, The Police and Crime Commissioner, Kent County Council as well as the Parish Councils.
- 3.3 Additionally the public were also consulted as were the heads of other services within the council, the RSPCA, the Dogs Trust and the Kennel Club.
- 3.4 The methods by which the consultation took place were:
 - 3.4.1 by email invitation to the following:
 - Borough Councillors
 - Parish Councillors
 - The Police and Crime Commissioner
 - Kent Police
 - Kent County Council
 - Heads of Service, Gravesham
 - Community Safety Unit, Gravesham
 - The Dogs Trust
 - The Kennel Club
 - The RSPCA
 - 3.4.2 the Public via the council's website and with the use of social media by the council's Communications Team,
- 3.5 All consultation responses have been collated and any that have resulted in an amendment to the draft PSPO have been detailed below.
- 3.6 Seventeen responses were received including four from the public. All were in support of a PSPO for dog fouling for a further three years. These responses are

listed in Appendix 2. There was one comment, from the Kennel Club, that has resulted in the wording of the draft PSPO to be amended.

- 3.7 The Kennel Club's first comment was that the council should ensure there is sufficient signage in the areas included in the PSPO. There is a significant amount of signage advising of the requirement to pick up after your dog or face a penalty. This is supplemented and or replaced when requested by the public in areas where they would like more signage or people remove/deface the signs etc.
- 3.8 The Kennel Club also commented that the council should consider whether the wording relating to the exemption for assistance dogs should be brought up to date. They suggested the use of wording by either of two councils – Northumberland County Council and Mole Valley DC.
- 3.9 The Council's shared Legal Service confirmed that "there may well be a challenge to the order based on the current wording. In terms of the suggested wording... the wording used by Northumberland CC is likely to be simpler to enforce".
- 3.10 Therefore the following wording relating to the exemption for assistance dogs in the existing PSPO has now been replaced in the draft PSPO, attached as appendix 3, with the following wording from Northumberland CC:

3.10.1 Existing wording:

"Nothing in this Order applies 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) 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.**

Replaced with:

"Nothing in this Order applies 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) 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 **which has been trained to assist a person with a disability.**

3.10.2 Existing wording:

(iv) "each of the following is a "prescribed charity" –

- Dogs for the Disabled (registered charity number 700454)
- Support Dogs (registered charity number 1088281)
- Canine Partners for Independence (registered charity number 803680)

Replaced with:

(iv) The expression "disability" shall have the meaning prescribed in section 6 of the Equality Act 2010 or as may be defined in any subsequent amendment or re-enactment of that legislation.

4. Delegation

- 4.1 The council's Dog Control Order for dog fouling remained in force for 3 years after The Antisocial Behaviour Crime and Policing Act 2014 came into force on 20 October 2014, after which it converted to the Public Spaces Protection Order for dog fouling with effect from 20 October 2017 and expired on 19 October 2020.
- 4.2 At the time the new legislation came in the Constitution was amended. At the meeting of the Cabinet on 05 January 2015 authority was delegated to exercise all the powers and functions of the council under and in connection with the Anti-Social Behaviour Crime & Policing Act 2014 including any orders or regulations made thereunder, and any legislation amending or replacing same, to the Chief Executive, all Directors and all Assistant Directors - with the exception that the power to make a Public Space Protection Order be reserved to the Chief Executive, or any officer designated by him for that purpose.
- 4.3 The reason for this decision, as noted in the Record of Decision: Executive Functions 1/C/2015 was "The Council has a duty to seek to prevent crime and disorder in its area in carrying out its duties. The Antisocial Behaviour, Crime and Policing Act 2014 provides a new set of powers for tackling antisocial behaviour to the benefit of victims and the community and provides a deterrent to perpetrators."
- 4.4 The relevant section of the Constitution (Annex 1.13) Functions Delegated to Officers of the Council, is paragraph 1.13A.14). This power has not been exercised to date, the council having relied upon the above legislation to transition the previous DCO to the current PSPO.
- 4.5 This delegation was intended to mean that the extension of the current PSPO can be agreed and approved by the Chief Executive. However upon further reflection on this issue in working towards the replacement of the PSPO on 20 October 2020 it is now considered more appropriate for the decisions regarding any new PSPOs to be made by full Council in accordance with the Local Authorities (Functions & Responsibilities) (England) Regulations 2000/2853 which provides in Schedule 1 a list of functions **not** to be the responsibility of an authorities' executive. That list includes under 1. Miscellaneous functions, Part I, item 49 "Power to make an order identifying a place as a designated public place for the purposes of police powers in relation to alcohol consumption" under s13(2) of the Criminal Justice & Police Act 2001.
- 4.6 The guidance relating to PSPOs says that "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."
- 4.7 Therefore it is recommended that the paragraph 1.13A.14 referred to above is deleted. It is not necessary to add any wording to the Constitution in relation to the council deciding on these matters as Annex 1.1 Responsibilities Reserved to Full Council already contains the appropriate wording at Section 5 (d) "to deal with any other matter which must, by law, be reserved for determination by the Council."
- 4.8 Directors and Assistant Directors are able to authorise officers to enforce under a PSPO including the service of FPNs. All relevant officers within the Environmental Protection Team are already duly delegated.

5. The Way Forward

- 5.1 Should Members, having duly considered all consultation responses, approve the replacement of the PSPO for dog fouling with a new PSPO valid for a further three years, (draft attached as Appendix 3), the following actions must be undertaken:
 - 5.1.1 The draft order and commencement date will be published on the council's website and shared with the Parish and County Councils, as required by legislation,
 - 5.1.2 The Head of Legal Services will be instructed to make the order prior to commencement on such future date to be determined.

6. BACKGROUND PAPERS

- 6.1 None

Anyone wishing to inspect background papers should, in the first place, be directed to Committee & Electoral Services who will make the necessary arrangements.

IMPLICATIONS	APPENDIX 1
Legal	<p>This report has been triggered by the requirement of The Antisocial Behaviour Crime and Policing Act 2014 for existing PSPOs to expire after 3 years on 19 October 2020.</p> <p>The reference to delegated authority to make PSPOs should be removed from the Constitution as outlined in section 4 of this report.</p> <p>The Head of the Shared Legal Service will need to sign and seal the new PSPO and support and carry out any future court action relating to the non-payment of a FPN etc.</p> <p>The order can be challenged on two grounds; that the Council did not have the power to make the order or to include particular prohibitions or requirements; or that one of the requirements of the legislation, such as consultation, has not been complied with.</p>
Finance and Value for Money	<p>The minimal costs associated with the extension of the PSPO will be accommodated within existing budgets. There may be costs in the future should there be a decision to expand enforcement of PSPOs and approval of any such expenditure will be sought via the usual channel.</p>
Risk Assessment	<p>The existing PSPO expired on 19 October 2020. Failure to ensure that the streets are kept clean leads to public dissatisfaction and potential for action to be taken against the council. The replacement PSPO will be under exactly the same terms as the existing PSPO therefore the impact on the public is minimal, but the council's reputation and ability to take action against offenders is maintained.</p>
Data Protection Impact Assessment	<p><i>A data protection impact assessment (DPIA) should be carried out at the start of any major project involving the use of personal data or if you are making a significant change to an existing process.</i></p> <p>a. Does the project/change being recommended through this paper involve the processing of personal data or special category data or criminal offence data?</p> <p>A definition of each type of data can be found on the Information Commissioner's Office website via the above links.</p> <p style="text-align: center;">Yes</p> <p>b. If yes to question a, have you completed and attached a DPIA including Data Protection Officer advice?</p> <p style="text-align: center;">No</p> <p>c. If no to question b, please seek advice from your nominated DPIA assessor or the Information Governance Team at gdpr@medway.gov.uk.</p>
Equality Impact Assessment	<p>a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community? If yes, please explain answer.</p> <p>The AC&P Act is fully inclusive and affects all people equally.</p> <p>The legislation allows exemptions for registered blind persons and certain other disabled persons in respect of picking up after their dog.</p>

	<p>b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality? If yes, please explain answer.</p> <p>No</p> <p><i>In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above</i></p>
Corporate Plan	<p>There are direct links to all three Objectives:</p> <p>#1 People, #2 Place and #3 Progress.</p>
Climate Change	<p>There are no direct links to climate change</p>
Crime and Disorder	<p>The presence of dog fouling gives rise to people feeling disgusted by their local environment. Suitable controls and enforcement improves feelings that the environment is clean and that those that impact detrimentally on the locality may face being penalised for having done so.</p>
Digital and website implications	<p>The Digital Team set up the reporting portal for dog fouling following the transition of the DCO to the PSPO so no further work is anticipated in this area.</p> <p>The draft PSPO will be posted on the website once agreed and before it comes into force.</p>
Safeguarding children and vulnerable adults	<p>No direct impact</p>