

Classification: Public

Key Decision: No

Gravesham Borough Council

Report to: Full Council
Date: 5 December 2023
Reporting officer: Jamie Izzard, Director (Communities & Inclusive Growth)
Subject: Dog Fouling – Public Space Protection Order

Purpose and summary of report:

To present Full Council with a draft Public Space Protection Order (PSPO) for Dog Fouling for formal approval and adoption.

Recommendations:

1. That Full Council agree to the extension of the Public Space Protection Order (PSPO) for dog fouling for a further three-year period and instruct officers to proceed with implementing the same.
2. That Full Council agree for the associated fixed penalty amount for the offence of failing to pick up after a dog to be increased from £75 to £100 with effect from the commencement of the new PSPO.

Key Implications:	
Item	Implications
Legal	<p>The Antisocial Behaviour Crime and Policing Act 2014 makes provision for the Council to make, vary, discharge, and extend PSPOs. PSPOs cannot have effect for more than 3 years but can be extended, before they expire, for further 3-year periods provided the Council is satisfied on reasonable grounds that doing so is necessary to prevent and occurrence or recurrence after that time of the activities identified in the order, or an increase in the frequency or seriousness of those activities after that time.</p> <p>If deemed necessary, the current PSPO can only be extended before it expires on 31 January 2024. After this time, a new PSPO would need to be sought.</p> <p>Schedule 1 of the Local Authorities (Functions & Responsibilities) (England) Regulations 2000/2853 provides in a list of functions not to be the responsibility of an authorities' executive (thereby making them a matter for full Council). 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.</p>

	<p>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.”</p> <p>Whilst legislation/guidance does specify whether the functions relating specifically to dog fouling PSPOs are a Cabinet or Council function, in light of the above and given that they replace Designated Public Place Orders (DPPOs) which were not to be a Cabinet function, it is the view of Legal Services that this matter should be reserved to Full Council.</p> <p>Section 5 (d) of Annex 1.1 in the Council’s Constitution, Responsibilities Reserved to Full Council provides the necessary wording to facilitate this.</p> <p>The Head of the Shared Legal Services will need to sign and seal the extended PSPO, and support 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	There are no costs associated with extending the PSPO. There may be costs in the future should there be a decision to expand enforcement of PSPOs.
Corporate Plan	There are direct links to the One Borough objective and associated commitments in respect of a Cleaner Environment and Attractive Borough.
Climate Change	There are no direct links to climate change.

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.

- 1.4 With effect from 20 October 2014 Councils could no longer make new Dog Control Orders and any existing ones only remained in force for 3 years after which they converted to Public Spaces Protection Orders. Consequently, Gravesham's DCO 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 current PSPO came into force w.e.f. 01 February 2021 and will expire on 31 January 2024.
- 1.6 It 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, with formal enforcement for not doing so being by way of a fixed penalty notice or prosecution.

2. Reporting

- 2.1 The primary mechanism for the public to report incidents of dog fouling is via an established 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, including making use of location services on mobile devices to drop a pin at their location. The public can however also report dog fouling by phoning Customer Services.
- 2.2 All notifications of dog fouling made to the council are automatically passed to the Waste Management Unit to arrange for the cleansing of the pavement and, where the owner is identified in a report to the council by a member of the public, the Environmental Protection Team contact that person in writing to remind them of their responsibility to pick up after their dog.
- 2.3 The following numbers of reports were received either through the dog fouling reporting portal on the website or via the Call Centre.

2017/18 - 122 complaints.
2018/19 - 110 complaints.
2019/20 – 46 complaints, 4 of which identified the owner.
2020/21 – 65 complaints, 9 of which identified the owner.
2021/22 - 90 complaints, 7 of which identified the owner.
2022/23 - 100 complaints, 11 of which identified the owner.
- 2.4 As can be seen from these figures, prior to the pandemic there was a downwards trend in reported cases of dog fouling. A significant dip was then seen during the start of the pandemic, likely due to lockdowns/social distancing/concerns about going outside, followed by a gradual year on year increase in reports back up towards pre-pandemic figures as normality resumed.
- 2.5 It is understood that the purchase of dogs as pets spiked during the pandemic which may also play a part in the increasing number of reports.
- 2.6 Currently, dog fouling can be enforced by the Street Scene Enforcement Officers within Environmental Enforcement, whilst on patrol, as well as officers within the Environmental Protection Team.
- 2.7 Whilst warning letters have been issued where the owner is known, no cases have progressed to the service of formal fixed penalty or community protection notices (CPN) during the terms of the current or previous PSPOs, which suggests

both that the PSPO is effective, and that the current dog fouling reporting system, Waste Management clean-up, and informal interventions are appropriate and proportionate responses.

- 2.8 Further efforts to reinforce the PSPO include the placing of additional dog fouling signage upon request, which is carried out on a regular basis, and attendance at relevant promotional events, e.g., ASB Action Week.

3. Proposals

- 3.1 Whilst most dog owners are responsible, dog fouling remains a matter of concern for the public, is unsightly, and presents a public health risk.
- 3.2 If the council wishes to be able to enforce against those that do not pick up after their dog after 31 January 2024, then the PSPO needs to be extended as there are no other viable alternative provisions in law to facilitate this.
- 3.3 It is therefore considered necessary and proportionate for the dog fouling PSPO to be renewed for a further three-year period with effect from 1 February 2024.
- 3.4 The fixed penalty notice (FPN) amount is currently set at £75. It is proposed that this is increased to the maximum permitted amount of £100 at the time of extending the PSPO in order to act as a greater deterrent and allow the maximum level of income to be recovered in the event of FPNs being served.

4. Public and Stakeholder Consultation

- 4.1 Following approval from Management Team on 8 August 2023, 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 2nd October to seek views on the proposed:
 - 4.1.1 Extension to the PSPO in respect of dog fouling for a further three years.
 - 4.1.2 Proposed increase in the maximum FPN amount from £75 to £100.
- 4.2 Methods of consultation were by direct email to stakeholders, publication on the council's website and promotion on social media.
- 4.3 All consultation responses were collated and are attached to this report at Appendix 2.
- 4.4 Only seven responses were received in total; three from local residents; one on behalf of the Dogs Trust; one on behalf of a community or voluntary group (unknown); one from a Councillor, and; one from the Kent Police and Crime Commissioner.
- 4.5 Of these, six supported the extension of the PSPO whilst one said they were unsure.
- 4.6 Five supported the increase in the proposed FPN amount, whilst one did not, and one was unsure.

5. Next steps

- 5.1 Should Members, having duly considered all consultation responses, approve the proposed extension of the PSPO for Dog Fouling and increase in FPN amount, the following actions will be necessarily 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, and;

5.1.2 The Head of Legal Services will make the order prior to the expiration of the current PSPO.

6. Appendices

6.1 The following documents are to be published with the report:

6.1.1 Appendix 1 - Draft Gravesham Dog Fouling PSPO 2024

6.1.2 Appendix 2 - Consultation responses

7. Background Documents

7.1 There are no background documents.

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Secondary Implications	
Risk Assessment	The existing PSPO will expire on 31 January 2024. Failure to ensure that the streets are kept clean can lead to public dissatisfaction. As the extended PSPO will be under the same terms as the existing PSPO the impact on the public is minimal, but the council's reputation and ability to act against offenders is maintained.
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? A definition of each type of data can be found on the Information Commissioner's Office website via the above links. No</p> <p>b. If yes to question a, have you completed and attached a DPIA including Data Protection Officer advice? N/A</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. N/A</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. The Anti-Social Behaviour, Crime and Policing Act 2014 is fully inclusive and affects all people equally. 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>
Crime and Disorder	The presence of dog fouling gives rise to people feeling offended or embarrassed 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.
Digital and website implications	The Digital Team will be required to make minor web-content changes to publicise the consultation and, if extended, the PSPO.
Safeguarding children and vulnerable adults	No direct impact.