

Report to Cabinet

Subject: Consultation on Public Spaces Protection Order for dog fouling

Date: 10 September 2020

Author: Director of Health and Community Wellbeing

Wards Affected

All

Purpose

To seek Cabinet authorisation to go out to formal consultation on the implementation of a Public Spaces Protection Order for dog fouling (Gedling Borough Council) 2020.

Key Decision

This is not a key decision

Recommendation(s)

THAT Cabinet:

- 1) Authorises the commencement of a 4 week consultation in accordance with Section 72 of the Antisocial Behaviour, Crime and Policing Act 2014, and as set out in this report, on the implementation of the Public Spaces Protection Order (PSPO) for dog fouling at Appendix 1.
- 2) Delegate authority to the Director of Health and Community Wellbeing in consultation with the Portfolio Holder for Public Protection to consider the consultation responses and approve the final version of the PSPO for dog fouling having considered the consultation responses.
- 3) Subject to the PSPO for dog fouling being approved following consultation, approves a fixed penalty level of £100, payable within 14 days for anyone found to be in contravention of the PSPO for dog fouling (Gedling Borough Council) 2020.
- 4) Subject to the PSPO for dog fouling being approved following consultation, delegates authority for enforcement of the PSPO to the Director of Health and Community Wellbeing.

1 Background

- 1.1 Dog fouling is an issue that affects many areas across the Borough. Gedling Borough Council currently enforces Dog Fouling under the Gedling Borough Council Dogs (Fouling of Land) Order 1998 made under the Dogs (Fouling of Land) Act 1996 (the 1996 Act). It is a criminal offence for anyone not to clean up forthwith after their dog has fouled on relevant land under the Order. The current practice is to issue a fixed penalty of £50 in the first instance to individuals who have failed to clean up after their dog. If the fixed penalty is not paid within 14 days then the individual can face prosecution in the Magistrates Court and receive a fine. Gedling Borough Council has a good record of tackling the problem of dog fouling by promoting responsible dog ownership and taking enforcement action where contraventions of the legislation are witnessed. Neighbourhood Wardens routinely carry out patrols in areas where dog fouling is reported to them sometimes early in the morning and late into the evening. Enforcement is focused on parks, recreation ground and children's play areas as well as built up residential areas. The number of fixed penalty notices issued for dog fouling are relatively modest when compared to other enforcement such as littering. In 2017/18 two fixed penalty notices were issued for dog fouling, in 2018/19 five were issued and in 2019/20 three were issued. This year two have been issued to date. It is often difficult to gather sufficient evidence to enforce dog fouling through fixed penalty notices as the incident has to be witnessed and the offender's details obtained. That said, dog fouling on land is something that residents are concerned about and we need to ensure there is a mechanism of enforcement in place.
- 1.2 In 2014 the Anti-Social Behaviour, Crime and Policing Act 2014 came into force. The Anti-Social Behaviour Crime and Policing Act 2014 (the Act) provides local authorities with powers to make Public Spaces Protection Orders (PSPOs). PSPOs are intended to address activities carried out in public spaces which have a detrimental effect on the quality of life of those in the locality.
- 1.3 The Act repealed and replaced all Dog Control Orders including the Dogs (Fouling of Land) Orders. The Act allowed for a transition period for such orders, that they would remain unaffected up to 20th October 2020. As the transitional period for Dog Control Orders in the Anti-social Behaviour Crime and Policing Act expires on 20th October 2020 this means that Gedling Borough Council will need to have in place a PSPO to be able to enforce dog fouling offences after 20th October 2020.
- 1.4 A local authority can make a PSPO if satisfied on reasonable grounds that two conditions are met:

- that activities carried out 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 that it is likely that activities carried on in a public place within that area will have such an effect

and

- the effect or likely effect of the activities is, or is likely to be of a persistent or continuing nature; is or is likely to be such as to make the activities unreasonable and justifies the restrictions imposed by the order.

- 1.5 Anyone found to be in breach of a PSPO can be issued with a fixed penalty notice of up to £100.00 or prosecuted at the Magistrates Court where they can receive a fine of up to £1000.00. Anyone who fails to pay a fixed penalty will be prosecuted in the Magistrates Court which is similar to the current process.
- 1.6 As the current dog fouling order will cease to have effect on 20th October 2020 it is considered necessary to have a Borough wide PSPO in place to deal with the offence of failing to remove dog faeces forthwith. Whilst the current level of fixed penalty under the Dog Fouling of Land Order is £50, this is lower than the level permitted for a PSPO breach. The level of fixed penalty for dog fouling has not been reviewed in some time, nor has consideration been given to the general increase in costs associated with enforcement over the years. Other PSPOs in place in the borough attract a fixed penalty level of £100 if breached, so any new PSPO, if introduced should reflect this level.
- 1.7 The importance of introducing a PSPO is reflected in the number of reports made to the Council by residents in relation to dog fouling. In 2018/2019 there were 167 such reports and in 2019/2020 there were 213. Whilst the number of reports is high, as indicated above, actually obtaining sufficient evidence to take enforcement action against individuals who have failed to clear up after their dog is difficult. In order to have sufficient evidence to enforce the incident needs to be witnessed and details of the dog owner obtained. Often, those offending are not "caught in the act" hence the low level of fixed penalties issued. If a PSPO is not introduced by the 20th October 2020 the Council will not be able to enforce dog fouling offences until such time as a PSPO is made. The ability to issue fixed penalty notices and take prosecutions in itself is a deterrent to those who are tempted not to clear up after their dog.
- 1.8 The introduction of a Borough wide PSPO for failing to remove dog faeces forthwith would include all public land within the Borough including all pavements and highways, parks and recreation grounds, all children's play areas and all football pitches. A copy of the draft PSPO to be consulted on

appears at Appendix 1 to this report.

- 1.9 By virtue of section 72 of the Act, before introducing a PSPO the Council is obliged to carry out consultation with the Chief Officer of Police, the local policing body, community representatives and owner/occupiers of land covered within the order.

2 Proposal

- 2.1 It is proposed that Members authorise the commencement of a consultation in accordance with section 72 of the Antisocial Behaviour, Crime and Policing Act 2014, on the implementation of the Public Spaces Protection Order (PSPO) for dog fouling to cover the whole of Gedling Borough. It is proposed that the consultation will be published through the Council's website and by placing an advert in the Nottingham Post. Although this is not required by the legislation, guidance issued by the Department for Environment, Food & Rural Affairs suggests that it is best practice to do so. Notices informing the public on how to access the consultation will be placed at the entrances to major recreation grounds across the Borough. . It is intended the consultation will be open for a period of 4 weeks, as this gives reasonable time for responses to the proposed PSPO.
- 2.2 It is proposed that Members delegate authority to the Director of Health and Community Wellbeing in consultation with the Portfolio Holder for Public Protection to approve the final version of the PSPO after taking into consideration any responses to the consultation with a view implementing the PSPO by 20th October 2020. If, after consultation it is considered that a PSPO should not be approved, this will be brought back to Cabinet for consideration.
- 2.3 Subject to the PSPO being approved after consultation is proposed that the level of fixed penalty for contravening the PSPO be set at £100 payable within 14 days. This is in accordance with the Act and reflects the level of fixed penalties for other PSPO breaches.
- 2.4 Subject to the PSPO being approved after consultation, it is proposed that authority is delegated to the Director of Health and Community Wellbeing to undertake enforcement of the PSPO, this can then be delegated to those undertaking enforcement such as neighbourhood wardens.

3 Alternative Options

- 3.1 Alternative to the proposal would be that Members do not authorise consultation on introducing the PSPO and allow the current dog fouling

order to expire with effect from 20th October 2020. This would mean that the Council will not be able to enforce or prosecute for dog fouling offences. In addition, consultation of any PSPO is required under the Act.

- 3.2 The approval of the final PSPO could be done by Executive without delegation to Director level. However, given the timescales involved in securing a PSPO by 20th October 2020, it is considered that the decision to approve the order and consideration of consultation responses can be delegated with members being involved through consultation.
- 3.3 The level of fixed penalty could be lower than £100, however this would not be consistent with other PSPO breaches and would not accurately reflect the costs involved with enforcement.
- 3.4 Authority in relation to enforcement could remain with the Executive, however this would place an undue operational burden on the Executive.

4 Financial Implications

- 4.1 There are minimal advertising costs associated with going out to consultation. Since 1996 the Council has been installing and erecting signs across the Borough informing members of the public to comply with the Dogs Fouling of Land Act. It is anticipated that there will be a gradual phasing in of signs across the Borough and this will be done within existing budgets.
- 4.2 Whilst the fixed penalty of £100 will generate income to cover enforcement and administration costs, it is not expected that the number of fixed penalties issued will be significant if the PSPO is approved.

5 Legal Implications

- 5.1 The Anti-Social Behaviour, Crime and Policing Act 2014 repeals all existing dog control orders. Dog fouling can only be dealt with by way of the PSPO from 20th October 2020. Any existing Byelaws or Orders dealing with dog fouling will no longer have effect meaning the Council will not be able to issue fixed penalty notices or prosecute individuals for dog fouling offences if a PSPO is not introduced. Consultation on a PSPO is also a statutory requirement and responses will need to be properly considered before the decision as to whether to approve a final PSPO is made.

6 Equalities Implications

- 6.1 Having a reasonable excuse is an exemption under the legislation. Where an offence occurs and a person with a disability has a reasonable excuse this would be taken into consideration before enforcement is pursued. Specifically guide dogs and assistance dogs will be exempt from the requirements of the PSPO and this would be applied to the Council for a variety of reasons which are identified on the PSPO attached at Appendix

1.

7 Carbon Reduction/Environmental Sustainability Implications

7.1 There are no carbon reduction/sustainability implications arising from this report.

8 Appendices

8.1 Appendix 1: - Draft Public Spaces Protection Order.

9 Background Papers

9.1 None

10 Reasons for Recommendations

10.1 The Anti-social Behaviour, Crime and Policing Act 2014 requires consultation to take place before the implementation of a Public Space Protection Order.

10.2 The Council will not be able to enforce dog fouling offences after 20th October 2020 if the PSPO is not introduced a delegation ensures swift approval of the PSPO if appropriate following consultation and ensures members are still consulted.

10.3 Approval of a fixed penalty level will be necessary if the PSPO is made and the level will reflect other similar offences and be consistent with legislation.

10.4 To enable swift enforcement action without overburdening the Executive should the PSPO be approved.

Statutory Officer approval

Approved on behalf of the Chief 28 August 2020
Financial Officer

Approved on behalf of the 28 August 2020
Monitoring Officer