

Decision of the Director of Health and Community Wellbeing in Consultation with the Portfolio Holder for Public Protection

Subject: Approval of Public Space Protection Order for dog fouling.

Date: 20 October 2020

Author: Legal Advisor

Wards Affected

All

Purpose

To approve the Public Spaces Protection Order for dog fouling (Gedling Borough Council) 2020.

Key Decision

This is a Key Decision

Recommendation(s)

THAT:

- 1) The Director for Health and Community Wellbeing approves the making of the Public Space Protection Order for dog fouling (Gedling Borough Council) 2020 in the form at Appendix 1.**

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. 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.

- 1.2 The Act repealed and replaced all Dog Control Orders including the Dogs (Fouling of Land) Orders.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.
- 1.3 At the Cabinet meeting on 10 September 2020 Members authorised a 4 week consultation in accordance with Section 72 of the Antisocial Behaviour, Crime and Policing Act 2014 on the implementation of the Public Space Protection Order (PSPO) for dog fouling at Appendix 1.
- 1.4 Members also delegated 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.
- 1.5 The consultation was published on the Council's website and an advert was placed in a local newspaper, the Nottingham Post. The consultation period ended on 12 October 2020.
- 1.6 The Council have received no responses to the consultation. The Council's Community Protection Manager informed both the Director and Portfolio Holder of the outcome of the consultation for them to consider approving the PSPO. Both the Director for Health and Community Wellbeing and the Portfolio Holder for Public Protection are in agreement that the contents of the PSPO at Appendix 1 are considered to be appropriate.
- 1.7 Once the PSPO is made the Council's seal will be added to the PSPO. The Council are then required to publish the PSPO on the Council's website and on the land effected by the PSPO to draw attention to its existence. Copies of the PSPO will be put up on lampposts around the borough particularly in and around parks and areas where dog fouling is a particular issue. Nottinghamshire County Council as highways authority and all Parish Council's within the borough will also be made aware that the PSPO has been made.

2 Proposal

- 2.1 It is proposed that the Director for Health and Community Wellbeing approves the making of the Public Space Protection for dog fouling (Gedling Borough Council) 2020 in the form set out at Appendix 1.

3 Alternative Options

- 3.1 Not to approve the PSPO as set out at Appendix 1. However as the transition period for prosecuting dog fouling offences is coming to an end this would leave the Council unable to take enforcement action against people who allow their dog to foul on public land.
- 3.2 To approve the PSPO on modified terms. There have been no responses to the public consultation and it is felt that the current terms of the PSPO are sufficient.
- 3.3 Not to approve PSPO and refer the matter back to cabinet for approval. Members delegated 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. There have been no responses to the consultation that require additional member consideration at Cabinet. Given the timescales involved in securing a PSPO by 20th October 2020, referring the decision back to Cabinet would result in a period of time where enforcement action for dog fouling offences could not be carried out by the Council.

4 Financial Implications

- 4.1 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 Council will not be able to enforce dog fouling offences after 20th October 2020 if the PSPO is not made.