

Committee Name and Date of Committee Meeting

Cabinet – 20 July 2020

Report Title

Consultation on Public Spaces Protection Orders – Town Centre and Borough Wide Dog Fouling

Is this a Key Decision and has it been included on the Forward Plan?

Yes

Strategic Director Approving Submission of the Report

Paul Woodcock, Strategic Director of Regeneration and Environment

Report Author(s)

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Ward(s) Affected

Dog Fouling – Borough Wide
Town Centre – Boston Castle

Report Summary

The current Town Centre Public Spaces Protection Order and the transitioned borough-wide dog fouling Public Spaces Protection Order expire in September and October 2020 respectively. This report proposes to undertake consultation to establish views in relation to Public Spaces Protection Orders and support a future decision about these Public Spaces Protection Orders. Views will be sought about the conditions that might be included within both Orders at the same time.

Recommendations

1. That approval be given to carry out a consultation in relation to a new Town Centre Public Spaces Protection Order.
2. That approval be given to carry out a consultation in relation to a Borough wide Public Spaces Protection Order specifically dealing with dog fouling.

List of Appendices Included

- Appendix 1 Dog Fouling Complaints and Fines
- Appendix 2 South Yorkshire Police Anti-Social Behaviour Analysis
- Appendix 3 Public Spaces Protection Orders Consultation Plan
- Appendix 4 Initial Equality Screening Assessment

Background Papers

Cabinet and Commissioners' Decision Making Meeting – 11 September 2017
(<https://modern.gov.rotherham.gov.uk/documents/s111846/Introduction%20of%20a%20Public%20Spaces%20Protection%20Order%20PSPO%20for%20Rotherham%20Town%20Centre.pdf>)

Anti-social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers
Statutory guidance for frontline professionals, Home Office, August 2019

Anti-social Behaviour, Crime and Policing Act 2014

Consideration by any other Council Committee, Scrutiny or Advisory Panel

None

Council Approval Required

No

Exempt from the Press and Public

No

Consultation on Public Spaces Protection Orders – Town Centre and Borough Wide Dog Fouling

1. Background

- 1.1 The Anti-Social Behaviour, Crime and Policing Act 2014 created powers to introduce Public Spaces Protection Orders (PSPOs) in order to prevent individuals or groups committing anti-social behaviour in public spaces.
- 1.2 The introduction of these powers superseded previous legislation, such as Dog Control Orders, contained within the Clean Neighbourhoods and Environment Act 2005. This allowed that the Council's existing Dog Control Order, which prohibited the fouling of land by dogs, was transitioned into a PSPO. This PSPO will expire on 19th October 2020.
- 1.3 On 11th September 2017, Cabinet and Commissioners Decision Making Meeting agreed the implementation of a new Public Spaces Protection Order from 1st October 2017, prohibiting a number of behaviours in the town centre that are considered to be anti-social behaviour. This is effective until the Order expires on 30th September 2020.

2. Key Issues

- 2.1 The Anti-Social Behaviour, Crime and Policing Act 2014 provides for PSPOs, including those that are transitioned: to be extended by three years; to be varied; and to be discharged, alongside the powers to introduce new Orders.
- 2.2 The Act requires that, where Orders are to be introduced or extended, consultation must be undertaken with:
 - The Chief Officer of Police, and the local policing body, for the police area that includes the restricted area;
 - Whatever community representatives the local authority thinks it appropriate to consult;
 - The owner or occupier of land within the restricted area.
- 2.3 In addition, the Act also stipulates that necessary publicity must be undertaken which means:
 - In the case of a proposed order or variation, publishing the text of it
 - In the case of a proposed extension or discharge, publicising the proposal.
- 2.4 Moreover, the Council is obliged to notify the parish council or community council, of the proposed order, extension, variation or discharge.
- 2.5 Enforcement of the transitioned Order for dog fouling has been by Council officers and through Service Level Agreement arrangements with Doncaster Council. Whilst South Yorkshire Police are authorised to undertake dog fouling enforcement, they do not currently undertake this activity. The Town Centre Order has been enforced by South Yorkshire Police and Council Officers.

- 2.6 Incidents of Anti-Social Behaviour (ASB) in the town centre and complaints of dog fouling across the Borough have been declining since 2016. Whilst this is encouraging, it is important to recognise that the issues remain and suitable tools and powers still need to be in place to tackle the problems as they arise. Complaints relating to rowdy or inconsiderate behaviour remain significant as a proportion of anti-social behaviour incidents recorded by South Yorkshire Police in the town centre and Public Spaces Protection Orders provide the tools for officers to tackle the problems.
- 2.7 The Council and partners continue to receive complaints relating to the town centre from business, Councillors and visitors alike. In addition, the town centre is a priority for crime reduction across the partnership. Moreover, the Barnsley and Rotherham Chamber of Commerce have raised concerns around activities in the town centre that affect business and the attractiveness of the town to visitors.
- 2.8 The town centre is a mixed area, including residential, with regeneration and development projects planned and completed, together with the implementation for the town centre masterplan already underway. A key part of the masterplan implementation is additional residential developments in and around the town centre. It is important that the Council and partners support residents and improvements through robust measures to tackle anti-social behaviour.
- 2.9 Although the reports made to the Council of dog fouling have reduced over the years, the issue remains an important issue to local communities where both risks to health and physical repulsion are significant. Complaints from Councillor, Parish and Town Councils and residents continue to highlight areas of concern. Appendix 1 provides details of the complaints received by the Council and the fines issued over the past five years. In addition, the spread of complaints demonstrated in the data, shows that this is not a localised problem but rather occurs throughout the Borough.
- 2.10 South Yorkshire Police Data, attached at Appendix 2, provides analysis of the overall trends in ASB in the town centre across time. This analysis shows a reduction in the number of incidents since the PSPO was introduced. However, issues remain, with rowdy/inconsiderate behaviour being the most significant categorisation of problems and accounting for 62% of all complaints. The next most prevalent problems are begging/vagrancy at 9% and nuisance vehicles at 7% of all complaints.
- 2.11 It is important to note that Public Spaces Protection Orders guidance states that they:
- “... should not be used to target people based solely on the fact that they are homeless or rough sleeping, as this in itself is unlikely to mean that their behaviour is having an unreasonably detrimental effect on the community’s quality of life which justifies imposing restrictions using a PSPO. ... These Orders should be used only to address any specific behaviour that is causing a detrimental effect on the community’s quality of life which is within the control of the person concerned. Councils should therefore consider carefully the nature of any potential Public Spaces Protection Order that may impact on*

homeless people and rough sleepers ... The council should also consider consulting with national or local homeless charities when considering restrictions or requirements which may impact on homeless people and rough sleepers.”

- 2.12 Since the measures were introduced a total of 168 fines for breaches of the Town Centre Public Spaces Protection Order have been issued to 106 individuals. Six cases have progressed to court with successful convictions resulting in penalties and costs imposed of £2,180. The most common behaviours which have attracted penalties include use of foul and offensive language, street drinking, urinating, and causing alarm and distress.
- 2.13 Over the duration of the transitioned Dog Fouling PSPO, since October 2019, 39 fines have been issued to individuals who have allowed their dogs to foul on land open to the public and have not cleared up after.
- 2.14 The Town Centre PSPO has been regularly reviewed by Councillors through the Council’s Improving Places Select Commission, initially in January 2019 and subsequently in March 2020. The latest review made the following recommendations and as a result, the committee will be engaged within the consultation process:
1. That the report be noted.
 2. That the results of the upcoming analysis in summer 2020 be submitted to Improving Places Select Commission for scrutiny with the goal of making recommendations about a possible further order in the Town Centre.

3. Options considered and recommended proposal

- 3.1 The Council could take the view that the town centre PSPO and the transitioned dog fouling Public Spaces Protection Order have served their purpose and that the downward trend in reported ASB and dog fouling is sufficient to negate the need to have PSPOs in place. It is not however considered that this would be a preferred option given that the issues remain, albeit on a downward trend, and the lack of a PSPO could have a negative impact on the positive trajectory. In addition, the PSPO offers the Council and partners tools to tackle very specific problems, without which effective responses to these types of behaviours are limited.
- 3.2 The consultation process is a statutory requirement prior to implementation of a PSPO. The consultation process will enable the Council to collate information about the nature and impact of ASB and to make an informed decision as to whether a PSPO is appropriate and proportionate in the circumstances. The consultation will form part of the evidence gathering in order to establish whether the conditions set out in the legislation, which are to be satisfied, before making a PSPO, are met. It will guide the Council as to the types of measures that should remain in place as part of a new PSPO and what, if any, new measures should be introduced.

4. **Consultation on proposal**

4.1 It is proposed that the consultation will commence on Monday 27th July 2020 and end on Sunday 23rd August 2020.

4.2 Consultees will include amongst others, South Yorkshire Police, Police and Crime Commissioner, Ward Members, relevant RMBC teams, voluntary, faith and community organisations, businesses, and the public.

4.3 The consultation will focus on the existing conditions, together with identifying any emerging issues that may be of concern to partners and the public. The following issues will be consulted upon:

- **Town Centre PSPO**

- Acting in a way that causes or may cause harassment, alarm or distress
- Approaching people for marketing or fund-raising purposes, without a license
- Dropping litter
- Keeping dogs on a lead (other than in the designated dog exercise areas in Clifton Park)
- Urinating or defecating in public
- Spitting
- Drinking alcohol when not within the boundaries of a licenced premise

- **Borough Wide Dog Fouling PSPO**

- Failing to remove and appropriately dispose of dog faeces

4.4 A consultation plan is attached at **Appendix 3**.

5. **Timetable and Accountability for Implementing this Decision**

5.1 It is proposed that the consultation will begin on 27th July 2020 and end on 23rd August 2020.

5.2 Following consultation, a report will be presented to Cabinet in September 2020 detailing the findings of the consultation and any recommendations that may be required.

5.3 Tom Smith, Assistant Director Community Safety and Street Scene, and Sam Barstow, Head of Service Community Safety and Regulatory Services, will be accountable for implementing this decision.

6. **Financial and Procurement Advice and Implications**

6.1 The majority of this proposed consultation exercise will be undertaken on-line, so costs associated with this process will be limited to IT costs and minimal printing and postage costs. The overall cost of this consultation exercise is estimated to be no higher than £2k and will be contained within the Service's approved revenue budget.

7. Legal Advice and Implications

7.1 The power to introduce a Public Spaces Protection Order is set out in the Anti-Social Behaviour, Crime and Policing Act 2014. The Act gives the Council the authority to draft and implement a Public Spaces Protection Order in response to particular issues affecting the community, provided it is satisfied on reasonable grounds that two conditions are met.

The first condition is 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.

The second condition is that the effect, or likely effect, of the activities:

- (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.

7.2 The Council will need to weigh up the all evidence in order be satisfied that the above conditions are met and to be satisfied that the Public Spaces Protection Order is necessary and proportionate in the circumstances.

7.3 The Act itself sets out the ability to challenge the validity of any Order and so it is vital the Council follows the correct process in terms of the implementation of the Order and this includes the requirement to consult. The Council must carry out the necessary consultation and the necessary publicity, and the necessary notification (if any), before:

- (a) making a public spaces protection order,
- (b) extending the period for which a public spaces protection order has effect, or
- (c) varying or discharging a public spaces protection order.

The Council must consult with:

- (a) the chief officer of police, and the local policing body, for the police area that includes the restricted area;
- (b) whatever community representatives the local authority thinks it appropriate to consult;
- (c) the owner or occupier of land within the restricted area (this does not apply to land that is owned and occupied by the local authority and applies only if, or to the extent that, it is reasonably practicable to consult the owner or occupier of the land).

7.4 The Council must also comply with the necessary publicity and notification requirements set out in the Act. The necessary publicity means

- (a) in the case of a proposed order or variation, publishing the text of it;
- (b) in the case of a proposed extension or discharge, publicising the proposal;

The necessary notification requirements means notifying the following authorities of the proposed order, extension, variation or discharge:

- (a) the parish council or community council (if any) for the area that includes the restricted area;
- (b) in the case of a public spaces protection order made or to be made by a district council in England, the county council (if any) for the area that includes the restricted area.

7.5 Any Order can last for a maximum of 3 years, unless extended under the provisions of the Act, and any such Order can be varied and/or discharged at any time.

7.6 The Council will need to consider the potential impact of a Public Spaces Protection Order on different sections of the community. Any Order should comply with the requirements of the public sector equality duty under the Equalities Act 2010. Although not contained with the legislation, the Council should carry out an Equalities Impact Assessment to establish whether any proposed Public Spaces Protection Order will have a disparate impact on groups with protected characteristics. The Council will need to ensure that any such groups are properly consulted where possible.

8. **Human Resources Advice and Implications**

8.1 There are no direct Human Resources implications arising from this report.

9. **Implications for Children and Young People and Vulnerable Adults**

9.1 There are no Children and Young People or Vulnerable Adults implications contained within or arising from the report.

10. **Equalities and Human Rights Advice and Implications**

10.1 There are no Equalities and Human Rights Advice implications contained within or arising from the report.

10.2 An Initial Screening Assessment has been included at **Appendix 4**. A full Equality Impact Assessment will be undertaken prior to support the decision in the light of the consultation results.

11. **Implications for Ward Priorities**

11.1 The consultation touches on key Ward priorities relating to safe and clean agendas and subsequently it is likely that the consultation proposed will generate interest in most Wards and in particular Boston Castle and those Wards with Parish or Town Councils.

11.2 Ward Members, Parish and Town Councils, will be consulted in accordance with the requirements of the Anti-Social Behaviour, Crime and Policing Act 2014, following the attached Consultation Plan at **Appendix 3**.

12. **Implications for Partners**

12.1 South Yorkshire Police are a key partner in delivery of the requirements of Public Spaces Protection Orders.

12.2 Businesses, particularly those within the town centre are likely to have some interest in ensuring that any impacts on the town centre from unacceptable behaviours, are made known to the Council, and in particular where these behaviours might affect the attractiveness of Rotherham as a place to do business or visit.

12.3 South Yorkshire Police, the Police and Crime Commissioner, and Barnsley and Rotherham Chamber of Commerce will be consulted under the provisions of the Anti-Social Behaviour, Crime and Policing Act 2014, following the attached Consultation Plan at **Appendix 3**.

13. **Risks and Mitigation**

13.1. The consultation may highlight further problems that may need to be addressed beyond what the consultation includes. Consequently, there will be a need to review such issues and consider them as part of the later proposed consultation report to Cabinet.

13.2 The findings from consultation must be considered in the context of the staff and resources available to enforce any provisions that are suggested in order to ensure that any measures that may be desired can be included in a meaningful way.

14. **Accountable Officers**

Tom Smith, Assistant Director Community Safety and Street Scene
Sam Barstow, Head of Service, Community Safety and Regulation

Approvals obtained on behalf of Statutory Officers:-

	Named Officer	Date
Chief Executive	Sharon Kemp	03/07/20
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	03/07/20
Head of Legal Services (Monitoring Officer)	Stuart Fletcher	03/07/20

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