

Public Report
Cabinet

Committee Name and Date of Committee Meeting

Cabinet – 21 September 2020

Report Title

Public Space Protection Order Proposals – September 2020

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)

Sam Barstow

Head of Community Safety and Regulatory Services

Sam.barstow@rotherham.gov.uk

Ward(s) Affected

Borough-Wide

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 details the response to the full public consultation.

The production of the report to Cabinet in July 2020 with proposals for consultation were delayed significantly due to Covid-19 pandemic work taking priority within the service. Given that, a request was made for this decision to be exempt from call-in to prevent a potential gap between the old and any proposed new Order. Any delay caused by the call-in process would seriously prejudice the Council's or the public's interests.

The Chair of Overview and Scrutiny Management Board and the Leader of the Opposition have agreed that a decision to exempt this decision from call-in is reasonable in the circumstances and have agreed to it being dealt with as an urgent matter.

Recommendations

1. The Cabinet approve the two draft Public Space Protection Orders attached as appendix 2 and 3 containing the following restrictions/requirements

2. Town Centre and Clifton Park PSPO

- a) Behaving in such a way or using language that causes, or is likely to cause, harassment, alarm or distress to another person.
- b) Making unsolicited approaches, in the open air, for the purposes of face-to-face fundraising and marketing of commercial products, carried out by organisations without prior written permission from the Council.
- c) Failing to keep a dog on a leash and under control (otherwise than within the designated area within Clifton Park, where dogs may be off leads but must remain under control, see attached maps)
- d) Littering
- e) Urinating or defecating in a public place, other than within designated public toilets.
- f) Spitting saliva or any other product from the mouth
- g) Consuming alcohol other than on licensed premises or at a licensed event

3. Borough Wide Dog Fouling PSPO

- a. If a dog defecates on any land to which this Order applies and the person who is in charge of the dog at the time fails to remove the faeces from the land forthwith, that person shall be guilty of an offence unless:
 - i. That person has reasonable excuse for failing to do so; or
 - ii. The owner, occupier or other person or authority having control of the land has consented (generally or specifically) to that person failing to do so.
- b. This Order does not apply to a person where:
 - i. that person is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948; or
 - ii. has a disability as defined by the Equality Act 2010 or its successor and who relies upon an accredited assistance dog trained by an accredited member of Assistance Dogs International (ADI) or the International Guide Dog Federation (IGDF) or other prescribed charity.

List of Appendices Included

- Appendix 1 Equality Impact Assessment
- Appendix 2 Draft Order – Town Centre and Clifton Park
- Appendix 3 Draft Order – Borough-wide
- Appendix 4 Policing Responses

Background Papers

[Anti-Social Behaviour Crime and Policing Act 2014](#)
[Statutory Guidance – ASB and Crime Act](#)
[Report to Cabinet July 2020](#)

Consideration by any other Council Committee, Scrutiny or Advisory Panel

Name of Committee – [Click here to enter a date.](#)

Name of Committee – [Click here to enter a date.](#)

Council Approval Required

No

Exempt from the Press and Public

No

Public Space Protection Order Proposals – September 2020

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. 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.
1.2	On 11 th 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.
1.3	On 20th July, 2020 approval was given by the Cabinet to undertake a full public consultation in relation to both of the orders listed above, being satisfied that the evidence exists to meet the thresholds set within the Anti-Social Behaviour, Crime and Policing Act 2014 (the Act).
2.	Key Issues
2.1	<p>A full public consultation was launched on 3rd August, 2020 and concluded on 31st August, 2020, running for a period of four weeks. The consultation plan outlined a list of specific individuals who have been directly contacted, alongside the open and publicised consultation:</p> <ul style="list-style-type: none"> • South Yorkshire Police – District Commander • Police Crime Commissioner – Dr Alan Billings • South Yorkshire Fire and Rescue • Communities and Communities of Interest (Dog Walker Group, Business Groups) • Voluntary and Community Sector Organisations • Groups representing protected characteristics and especially visually impaired for conditions related to dogs <ul style="list-style-type: none"> ○ Hate Crime Scrutiny Group (who represent all protected characteristics) ○ Age UK ○ Sense ○ Speakup ○ Clifton Partnership ○ Further organisations were also contacted and the above is not exhaustive • All Ward Councillors • RMBC departments: <ul style="list-style-type: none"> ○ Early Help – Kirsty Woodhead

- Youth Offending Service – Emma Ellis
- Community Protection – Craig Cornwall, Richard Bramall, Chris Stone
- Housing – Paul Walsh
- Homelessness Team – Jill Jones/Kim Firth
- Neighbourhoods – Martin Hughes
- Greenspaces – Andy Lee
- Highways – Colin Knight
- Rotherham Youth Cabinet
- Transport
 - Travel South Yorkshire – Rotherham Interchange
 - National Rail – Rotherham Railway Station
- Schools and Colleges
 - Rotherham College
- Community Organisations
 - REMA – Emma Sharp
 - Friends of Clifton Park Community Group
- Businesses
 - Rotherham Voice (all town centre businesses) – Simeon Leach
 - Barnsley and Rotherham Chamber of Commerce – Simeon Leach
 - Rotherham Markets – Dean Thurlow
- Parish and Town Councils
 - Anston Parish Council
 - Aston cum Aughton Parish Council
 - Bramley Parish Council
 - Brampton Bierlow Parish Council
 - Brinsworth Parish Council
 - Catcliffe Parish Council
 - Dalton Parish Council
 - Dinnington St. John's Town Council
 - Firbeck Parish Council
 - Gildingwells Parish Council
 - Harthill with Woodall Parish
 - Hellaby Parish Council
 - Hooton Levitt Parish Council
 - Hooton Roberts Parish Council
 - Laughton en le Morthen Parish Council
 - Letwell Parish Council
 - Maltby Town Council
 - Orgreave Parish Council
 - Ravenfield Parish Council
 - Thorpe Salvin Parish Council
 - Thrybergh Parish Council
 - Thurcroft Parish Council
 - Todwick Parish Council
 - Treeton Parish Council
 - Ulley Parish Council
 - Wales Parish Council

	<ul style="list-style-type: none"> ○ Waverley Community Council ○ Wentworth Parish Council ○ Whiston Parish Council ○ Wickersley Parish Council ○ Woodsetts Parish Council
2.2	<p>The following communications activity has taken place in order to promote the consultation:</p> <ul style="list-style-type: none"> ● Press release distributed to all local and regional media, including the Sheffield Star, Yorkshire Post, Rotherham Advertiser, Radio Sheffield, and local TV stations ● Email distributed to all local councillors ● Two notices in the external residents COVID newsletter (which goes to around 30-40,000 residents) ● Targeted email bulletin on Monday 24th August to subscriber topics of Parks News, Rotherham Town Centre News and also the New Consultations and Reviews topic. Total number of email recipients, 10,038 subscribers. ● Inclusion in the weekly members newsletters ● Inclusion in the neighbourhood bulletin to residents ● Regular posts on the Council’s social media account (Twitter and Facebook) throughout August, increased to daily postings from the 18th August ● Postings on the Clifton Park website and Rotherham Town Centre Facebook pages ● Regular posting on the Community Safety Facebook pages ● Article in the Rotherham Advertiser ● Report on local radio station Rother FM ● Coverage in the Rotherham Gazette ● Article in Rothbiz ● Article posted on the Council’s website with a link from the main home page https://www.rotherham.gov.uk/news/article/171/consultations-under-way-on-extension-to-public-space-protection-orders ● Articles in internal briefing to Council staff
2.3	<p>In terms of the public consultation, this was primarily delivered via an online survey, however, paper copies were made available and every premise (private or business) within the town centre and Clifton park area received a letter directly. The consultation gathered 373 online responses.</p>
2.4	<p>In terms of the respondents to the online survey themselves:</p> <ul style="list-style-type: none"> ● 368 were from individuals with six response from organisations ● 55% of respondents were female and 38% male (with the remainder preferring not to answer). ● 87% of respondents described their ethnicity as ‘White British’, with a relatively large proportion of respondents (9%) preferring not to answer. ● Only 3% of respondents described their ethnicity as being other than ‘White British’.

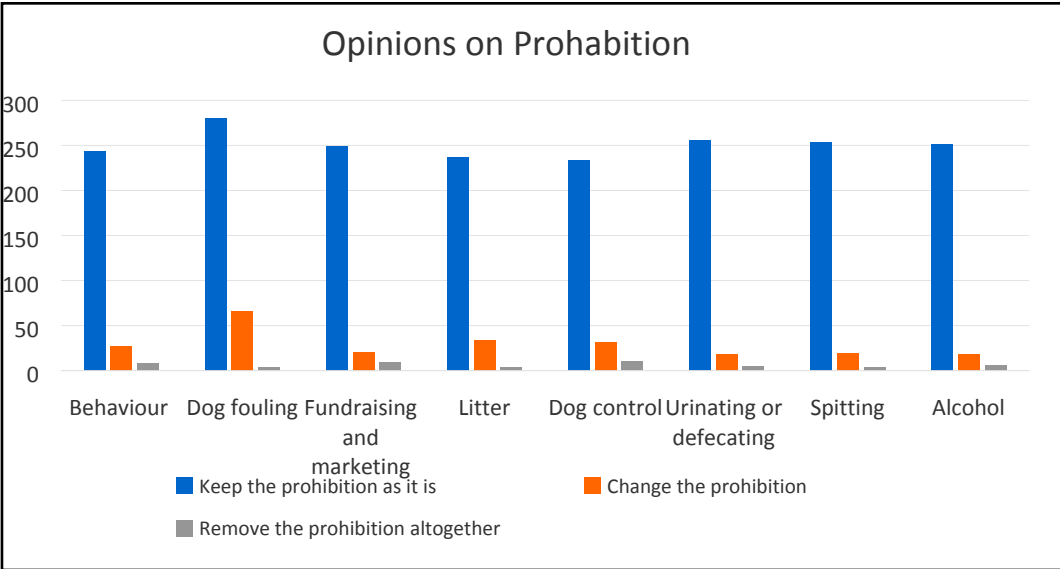
	<ul style="list-style-type: none"> 54% of respondents were over 55 years of age, and only 5% of responses were received from people under the age of 34. <p>Responses to the online consultation have therefore not reflected the diversity of Rotherham, or of the more specific areas of Clifton Park and the Town Centre. This was a concern identified during the development of the consultation and this was a driving factor for contacting a number of representative organisations, as listed in section 2.1.</p>																																				
2.5	<p>Respondents are primarily individuals in relation to the online survey with one organisation responding through this method. Respondents overall were more likely to visit Clifton Park regularly than Rotherham Town Centre. Overall, people strongly agreed with the making of the order on the same terms as those proposed.</p>																																				
2.6	<p>The following Chart and Table details the level of support for each individual condition.</p> <p>Chart 1 – Level of Support for Conditions</p>  <table border="1"> <caption>Opinions on Prohabitation</caption> <thead> <tr> <th>Condition</th> <th>Keep the prohibition as it is</th> <th>Change the prohibition</th> <th>Remove the prohibition altogether</th> </tr> </thead> <tbody> <tr> <td>Behaviour</td> <td>250</td> <td>30</td> <td>10</td> </tr> <tr> <td>Dog fouling</td> <td>280</td> <td>70</td> <td>10</td> </tr> <tr> <td>Fundraising and marketing</td> <td>250</td> <td>20</td> <td>10</td> </tr> <tr> <td>Litter</td> <td>240</td> <td>40</td> <td>10</td> </tr> <tr> <td>Dog control</td> <td>240</td> <td>35</td> <td>10</td> </tr> <tr> <td>Urinating or defecating</td> <td>260</td> <td>20</td> <td>10</td> </tr> <tr> <td>Spitting</td> <td>260</td> <td>20</td> <td>10</td> </tr> <tr> <td>Alcohol</td> <td>250</td> <td>20</td> <td>10</td> </tr> </tbody> </table>	Condition	Keep the prohibition as it is	Change the prohibition	Remove the prohibition altogether	Behaviour	250	30	10	Dog fouling	280	70	10	Fundraising and marketing	250	20	10	Litter	240	40	10	Dog control	240	35	10	Urinating or defecating	260	20	10	Spitting	260	20	10	Alcohol	250	20	10
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Table 1 – Level of Support for Conditions (%)								
	Behav our	Dog foulin g	Fundr aising and marke ting	Litter	Dog contro l	Urinat ing or defeca ting	Spittin g	Alcoh ol
Keep the prohib ition as it is	87%	80%	90%	86%	84%	92%	92%	91%
Chang e the prohib ition	10%	19%	7%	12%	12%	6%	7%	7%
Remo ve the prohib ition altoge ther	3%	1%	3%	2%	4%	2%	1%	2%
2.7	As can be seen, there is strong support to keep the current prohibitions in place, as they are, for every condition. The written comments have also been analysed, particularly in areas where individuals had selected the option to either change the condition or remove it all together. In the majority of cases additional comments remained supportive of the condition itself but requested further expansion, tougher penalties or a greater geographical area. In respect of tougher penalties, the legal provisions are clear and the £100 fine is the maximum that can be issued under a PSPO however, repeat offenders will likely face further investigation where additional powers could be applied specific to individuals. With respect to the condition covering a greater geographical area, this cannot be addressed within this particular report however the option of a PSPO to address issues in any geographic location are routinely considered.							
2.8	A range of statutory consultees are identified within the guidance and in particular this relates to the Police and Crime Commissioner, District Commander of Police and the fire and rescue service. Written responses have been received from the Police and Crime Commissioner and the District Commander of Police and both provide broad support for the proposals. Both responses are attached as appendix 4.							
2.9	A specific detailed representation was also made in relation to dogs being kept on a lead within the Clifton Park area and was based on a Freedom of Information request which showed no complaints relating to this type of							

	behaviour and therefore expressing the view this should be removed as a prohibition. The details of the Act are clear and are referred to in section 7. As can be noted, the Act allows for conditions to be made relating to behaviours likely to occur in an area and likely to have a detrimental impact. The case for introduction of the order is reinforced by the responses to the consultation overall, as detailed above. The consultation also asked people to identify whether they were dog walkers and when these responses are analysed, the proposal still enjoy broad support overall with 81% of people who identified as dog walkers being in favour of the Town Centre and Clifton Park Proposals (of 73 total respondents), with 88% (of 104 total respondents) agreeing with the borough-wide dog fouling proposal.
3.	Options considered and recommended proposal
3.1	The public consultation sought views as to whether the order should be made on the conditions proposed, whether further changes should be made or whether a further order should be made at all. Overwhelmingly, as can be noted from the analysis above, there is strong support for each individual condition proposed.
3.2	A review of the comments made and written responses has not identified any further conditions that would be appropriate at this stage, though this is subject to constant review.
4.	Consultation on proposal
4.1	The details of the responses to the consultation are discussed within the main body of the report.
5.	Timetable and Accountability for Implementing this Decision
5.1	As can be noted above, implementation of the order must take place before the end of September in order to maintain the current provisions. Subject to approval, both orders would seek to commence on the 1 st October 2020 and will last for a period of three years.
6.	Financial and Procurement Advice and Implications (to be written by the relevant Head of Finance and the Head of Procurement on behalf of s151 Officer)
6.1	The costs associated with this consultation have been minimal, as the majority of the consultation has been undertaken on-line. All costs have been contained within the Service's approved revenue budget. In addition, all staff and non-pay costs associated with the on-going enforcement of these PSPOs will be contained within the Service's approved revenue budget.
7.	Legal Advice and Implications (to be written by Legal Officer on behalf of Assistant Director Legal Services)

7.1	<p>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.</p> <p>The first condition is that:</p> <p>(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</p> <p>(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.</p> <p>The second condition is that the effect, or likely effect, of the activities:</p> <p>(a) is, or is likely to be, of a persistent or continuing nature,</p> <p>(b) is, or is likely to be, such as to make the activities unreasonable, and</p> <p>(c) justifies the restrictions imposed by the notice.</p> <p style="padding-left: 40px;">The Council will need to weigh up all of the evidence and consider the consultation responses, in order to assess whether it is satisfied that the above conditions are met and to assess whether it is satisfied that the Public Spaces Protection Order is necessary and proportionate in the circumstances.</p>
7.2	<p>The Act 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, the necessary publicity and the necessary notification (if any), before:</p> <p>(a) making a public spaces protection order,</p> <p>(b) extending the period for which a public spaces protection order has effect, or</p> <p>(c) varying or discharging a public spaces protection order.</p>
7.3	<p>The Council must consult with:</p> <p>(a) the chief officer of police, and the local policing body, for the police area that includes the restricted area;</p> <p>(b) whatever community representatives the local authority thinks it appropriate to consult;</p> <p>(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.</p>

	Proper consideration needs to be given to all consultation responses, when considering the test for the implementation of a Public Spaces Protection Order.
7.4	<p>The Council must also comply with the necessary publicity and notification requirements set out in the Act.</p> <p>The necessary publicity means:</p> <p>(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.</p> <p>The necessary notification requirements means notifying the following authorities of the proposed order, extension, variation or discharge:</p> <p>(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.</p>
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.
8.	Human Resources Advice and Implications
8.1	No direct HR implications arising from this report. Some Council officers and Police staff are authorised to deal with breaches of the PSPO. There are no additional resources to support this work and in both instances the order currently exist and therefore do not require additional resources.
9.	Implications for Children and Young People and Vulnerable Adults
9.1	This order seeks to both protect the public and address poor behaviour. It is anticipated that implementation of this order will have a positive effect on all within the community by tackling ASB.
10.	Equalities and Human Rights Advice and Implications
10.1	<p>The Council has considered the potential impact of a Public Spaces Protection Order on different sections of the community during implementation. Specific efforts have been made to contact specific groups relating to disability such as sense and speakup. The elements of the order relating to dogs do not apply to individuals registered as having a visual impairment.</p> <p>The draft Order and consultation requirements comply with the requirements of the public sector equality duty under the Equalities Act</p>

	2010. Although not contained within the legislation, the Council has carried out an Equalities Impact Assessment (see Appendix 1) to establish whether any proposed Public Spaces Protection Order will have a disparate impact on groups with protected characteristics.
11.	Implications for Ward Priorities
11.1	The consultation touched on key Ward priorities relating to safe and clean agendas and therefore the proposal is likely to generate interest in most Wards, but in particular Boston Castle and those Wards with Parish or Town Councils.
11.2	Ward Members, Parish and Town Councils, have been consulted in accordance with the requirements of the Anti-Social Behaviour, Crime and Policing Act 2014.
12.	Implications for Partners
12.1	South Yorkshire Police are a key partner in the delivery of the requirements of Public Spaces Protection Orders. PSPOs are enforceable by both Council officers and Police Officers/Police Community Support Officers. Direct consultation has taken place with the Police who are supportive of the order, as noted above.
12.2	Businesses, particularly those within the town centre are likely to have an 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 have been consulted under the provisions of the Anti-Social Behaviour, Crime and Policing Act 2014.
13.	Risks and Mitigation
13.1.	Any proposals must be considered in the context of the staff and resources available to enforce any provisions that are implemented in order to ensure that any measures that may be desired can be included in a meaningful way.
14.	Accountable Officers
	Sam Barstow, Head of Community Safety and Regulatory Services

Approvals obtained on behalf of Statutory Officers:-

	Named Officer	Date
Chief Executive	Sharon Kemp	04/09/20
Strategic Director of Finance & Customer Services (S.151 Officer)	Named officer	Click here to enter a date.
Head of Legal Services (Monitoring Officer)	Named officer	Click here to enter a date.

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