

**Committee Name and Date of Committee Meeting**

Cabinet – 20 November 2023

**Report Title**

Borough wide Public Space Protection Order (PSPO)

**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**

Borough Wide

**Report Summary**

This report proposes to re-designate the Borough Wide Dog Fouling Public Spaces Protection Order. This would be on the same terms as the previous Order which is to make it an offence for an individual to fail to remove dog faeces if they are in charge of the dog.

**Recommendations**

1. That Cabinet approves the designation of a new Public Spaces Protection Order in the Borough as detailed in Appendix 1, for a period of one year.

**List of Appendices Included**

- Appendix 1 Draft Public Spaces Protection Order – Borough Wide Dog Fouling and Control 2023
- Appendix 2 Summary of Consultation Responses
- Appendix 3 Dog Fouling and Dog related complaints data
- Appendix 4 Equalities Screening Impact Assessment
- Appendix 5 Carbon and Climate Change Assessment

## **Background Papers**

- Information on current Public Spaces Protection Orders:  
[Public Spaces Protection Orders \(PSPOs\) – Rotherham Metropolitan Borough Council](#)
- Public Spaces Protection Orders – Guidance for Councils provided by the LGA:  
[Public spaces protection orders: guidance for councils \(local.gov.uk\)](#)
- General Enforcement Policy:  
[General Enforcement Policy – Rotherham Metropolitan Borough Council](#)
- Help with Anti-Social Behaviour gov.uk guidance:  
[Help with anti-social behaviour for social housing tenants - GOV.UK \(www.gov.uk\)](#)
- copy of current sealed Order, effective 2020:  
[public-spaces-protection-order-town-centre-and-clifton-park \(rotherham.gov.uk\)](#)

## **Consideration by any other Council Committee, Scrutiny or Advisory Panel**

None

## **Council Approval Required**

No

## **Exempt from the Press and Public**

No

## **Borough wide Public Space Protection Order (PSPO)**

### **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. They are intended to help reduce the impact of anti-social behaviour in public spaces.
- 1.2 On 21 September 2020, Cabinet agreed to the implementation of a new Dog Fouling Public Spaces Protection Order to come into effect from 1st October 2020. The relevant statute dictates that such Orders can only be in place for three years at a time and therefore the Council must consider whether to make a further Order.
- 1.3 A public and stakeholder consultation took place between 26th June 2023 and 6th August 2023. This took the form of an online public consultation via the Council's website, and direct invitations to key statutory agencies, such as the Police and Community groups, such as RotherFed. Consultation on any proposed order is a statutory requirement and following a review of the level of feedback received, it was decided a further period of consultation should be delivered in order to increase responses, this also included additional face to face engagements and took place between the 2nd and the 16th of October 2023.
- 1.4 This report details a review of the existing PSPO, outcomes of the targeted public and stakeholder consultation on renewing the order, along with a recommendation to renew the Order based on the same conditions.

### **2. Key Issues**

- 2.1 In order to consider the next steps in relation to the PSPO, it is important to consider the effectiveness of the current Order and the evidence available to support a further order and each condition within the order.
- 2.2 Although the reports made to the Council of dog fouling have reduced over the years, the issue remains an important one where both risks to health and physical repulsion are significant. Complaints from Councillors, Parish and Town Councils and residents continue to highlight areas of concern. Appendix 3 provides details of the complaints received by the Council since 2016 by year, and by area in the period of 2020 to 2023. In addition, the spread of complaints demonstrated in the data, shows that this is not a localised problem but rather occurs throughout the Borough, with hotspot areas.
- 2.3 In addition, the number of dog related incidents and complaints has increased in Rotherham significantly over the last few years. Nearly 450 dogs were seized by South Yorkshire Police in 2022 which is six times as many as five years ago. Similarly, stray dog complaints handled by the Council were at their highest level in 2022 with 328 complaints, higher than both the previous

two years. It is believed that the national increase in dog ownership, and so-called “Covid Puppies”, has contributed to an increase in dog related anti-social behaviour. In the most extreme circumstance, this can have fatal and life changing outcomes.

2.4 The proposed Order can be enforced by authorised officers from the Council’s Regulation and Enforcement service and South Yorkshire Police staff. However, the Council takes primary responsibility for dealing with issues such as dog fouling. Since October 2020, 9 Fixed Penalty Notices (FPNs) have been issued in the locality to individuals breaching the Order. Whilst the level of fines appears low, this does not reflect the impact that high visibility patrols generate in dog fouling hotspots, where the presence of officers in itself encourages people to pick up after their dogs. However, officers cannot be present at all locations all of the time, so it is important for them to have the power to take action when they witness someone breaching the PSPO. It is acknowledged that levels of enforcement are lower than desired and this needs to be further considered as it may directly impact the effectiveness of any order and certainly any potential scope to increase the number of offences covered by the order. As a result of low levels of enforcement across PSPOs in general, officers will lead a review of the enforcement capacity and capability as it relates to PSPOs in order to inform future orders. In light of this, it may be appropriate to deliver a shorter duration PSPO to allow for enforcement to be reviewed and any further conditions to be properly considered.

2.5 Following public and stakeholder consultation, the preferred option would be to renew the Order formally as per the below condition. The rationale for these conditions is provided below:

2.6

<b>Condition –</b>	<b>In Current Order?</b>	<b>Recommendation</b>	<b>Rationale</b>
In this area any person carries out acts from which they are prohibited, commits and offence, namely:			
Failure of a person to remove dog faeces from land	Yes	Maintain in the order	Although dog fouling complaints are reduced, it is still a huge public health concern that requires addressing using both educational and enforcement tools.
Conditions to be considered further as part of the further review referenced in section 2.4			
Failing to put a dog on a lead when requested to do so by an authorised officer	No	To be considered as part of a wider review which consider enforcement capacity	Irresponsible dog ownership and failure to control dogs is doubtless a contributory factor to dogs then straying or being involved in

			incidents with other dogs or humans and this area should therefore be further explored.
Failing to keep a dog on a lead in a cemetery	No	To be considered as part of a wider review which consider enforcement capacity	This is a disrespectful act which adds to the perception of poor dog ownership and dog related anti-social behaviour (ASB) complaints and this area should therefore be further explored.
Taking a dog into or keeping it within a fenced/enclosed children's play area	No	To be considered as part of a wider review which consider enforcement capacity	There is potential for serious incidents that involve injuries to young people or impact on enjoyment of facilities from roaming or out of control dogs in children's play areas and this area should therefore be further explored.
Being in charge of a dog and not carrying suitable means to remove any dog fouling	No	To be considered as part of a wider review which will consider enforcement capacity	This reaffirms the dog fouling removal message and assists when dealing with cases where individuals claim not to have means to remove fouling, but normally do and this area should therefore be further explored.

## 2.7 Partner and Public Consultation

From 26 June to 6 August 2023, and subsequently between the 2 and 16 October 2023 a public and stakeholder consultation process has taken place. This included:

- Signposting of the online consultation by the Council's Social Media platforms.
- Inclusion of the consultation in corporate newsletters including 'Rotherham Round-Up' Newsletter which has thousands of subscribers.
- Email to all registered private sector Landlords and Managing Agents inviting participation as Rotherham residents or Business Representatives.

- Discussion with key stakeholders within frontline practitioner meetings and Ward Briefings.
- Site visit to Barnsley Town Centre with key partners to discuss utilisation of the PSPO, common issues and share learning.
- Emails to all town centre businesses registered with RiDO.
- Inclusion of the news item on a Voluntary Action Rotherham e-bulletin with 1,300 subscribers.
- Letters of invitation to reply to the key statutory agencies such as the Police, Police and Crime Commissioner, SY Fire & Rescue as well as well-established voluntary and third sector organisations such as Clifton Learning Partnership, REMA and RotherFed.
- Face to face engagement with Businesses and the Public
- Contact with Parish Councils
- Contact with all Elected Members

2.8 This consultation focussed on:

- The effectiveness of the original designation.
- Views on the effectiveness of any future designations.
- An intention to vary the current order to add in clauses around Dog Control and associated behaviours.

2.9 Appendix 2 provides an overview of the Consultation responses. In total:

- 103 responses were received.
- 43% of respondents were in support, with 17% preferring not to say. This means there is a majority of respondents in support of the proposed order.
- When asked if the proposed conditions were aligned to respondents priorities, 83% agreed.
- Comments received suggested that Dog Fouling remains a key community concern.
- Some responses alluded to issues with resourcing and visibility of officers enforcing the Order.

### **3. Options considered and recommended proposal**

3.1 Consideration has been given to not making a further order however, there remains a view amongst Enforcement Officers that dog fouling needs to be controlled and therefore the order remains necessary.

3.2 The preferred options is that the order is made based on the proposals within this paper. This is based on the available evidence and the commitment to review further development of the orders alongside enforcement activity.

3.3 The order could be remade for a period of three years however as noted within the report, a further detailed review of enforcement capacity will take place which will include consideration of the future viability of the orders as well as any further conditions which may be appropriate.

#### **4. Consultation on proposal**

- 4.1 Stakeholders and statutory agencies were consulted between 26 June and 6 August 2023 and then further consultation between the 2 and 16 October 2023, the results of which have been reviewed and responded to above. Consultation is a statutory requirement, and the Service is satisfied the requirement has now been met.

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

- 5.1 The PSPO will be designated following the Cabinet decision, subject to call-in periods.
- 5.2 The Assistant Director of Community Safety and Street Scene alongside the Head of Community Safety and Regulatory Services are accountable for implementing the decision.

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

- 6.1 The costs of undertaking the consultation and utilising these powers, including officer time and associated legal costs, will be contained within the approved revenue budget for this Service.
- 6.2 Income received as a result of fines from breaching the current order is minimal, totalling £900 since October 2020.
- 6.3 There are no direct procurement implications arising from the recommendations detailed in this report.

#### **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.
- 7.2 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.
- 7.3 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.

- 7.4 The Council will need to weigh up all of the evidence and consider 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.
- 7.5 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:
- 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.
- 7.6 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).
- 7.7 Proper consideration needs to be given to all consultation responses, when considering the test for the implementation of a Public Spaces Protection Order.
- 7.8 The Council must also comply with the necessary publicity and notification requirements set out in the Act.
- 7.9 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.
- 7.10 The necessary notification requirements mean 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.

- 7.11 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 There are no direct human resources implications arising from the recommendations within this report.

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

- 9.1 Each enforcement decision is considered individually to ensure that enforcement is proportionate. In the case of young people, they cannot be issued Fixed Penalty Notices, however, as breach of the Order is a criminal offence and could still be liable to prosecution. Generally, officers will not seek to criminalise young people due to the associated impacts and will therefore take a staged and appropriate response, involving parents or carers and other key statutory services where required. Similarly, in the case of vulnerable adults, officers may adopt differing approaches that seek to deliver on the objectives of the PSPO whilst also considering an individual's circumstance, where relevant.
- 9.2 The intention of the Order is to help protect Children and Young People, in particular, with reference to Dog Control requirements such as requiring dogs to be on leads and kept out of designated play facilities so that they can be enjoyed to the full. In addition, the dog faeces left on land can be prejudicial to health for all humans who may come into contact with it – including all age groups put particularly pertinent to Young People and Vulnerable Adults.

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

- 10.1 There are no equalities or human rights implications. A screening assessment has been carried out in Appendix 4

## **11. Implications for CO2 Emissions and Climate Change**

- 11.1 An assessment has been carried out in Appendix 5 with no direct implications identified.

## **12. Implications for Partners**

- 12.1 The Policy is likely to place some demands on partners where information might be required in relation to engagement and enforcement of the Order, which primarily relates to law enforcement agencies such as the Police. The legislation requires the Council to specifically consult with the local Police leadership to ensure the implications are considered. This has been completed.

12.2 In response to the proposals, Chief Inspector Sharron Woods sent the following by written response:

12.3 *“We support the refreshed PSPO in relation to dog fouling within the borough and the widening of the conditions will allow partners to take appropriate action if offences occur, and reassure the community that the partnership take their concerns around dog fouling and linked ASB seriously.”*

### 13. Risks and Mitigation

13.1 Choosing not to renew the Order may reduce the tools available to the Council and partners to combat dog related ASB in the Borough.

13.2 More broadly, failure to effectively meet key responsibilities and obligations will negatively impact on the Council’s image whilst failing to deliver national and local priorities.

### 14. Accountable Officers

Emma Ellis, Head of Community Safety & Regulatory Services

Approvals obtained on behalf of Statutory Officers: -

	<b>Named Officer</b>	<b>Date</b>
Chief Executive	Sharon Kemp	06/11/23
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	01/11/23
Assistant Director, Legal Services (Monitoring Officer)	Phil Horsfield	01/11/2023

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