

CABINET

2 FEBRUARY 2021

MEDWAY-WIDE PUBLIC SPACE PROTECTION ORDERS

Portfolio Holder: Councillor Adrian Gulvin, Portfolio Holder for Resources

Report from: Richard Hicks, Director of Place and Deputy Chief Executive

Author: Neil Howlett, Community Safety and Enforcement Manager

Summary

This report aims to give a briefing on the background to PSPOs and the status of 2 lapsed PSPOs in Medway. These are orders that address dog fouling and dogs on leads (by direction) that were in place across the whole of Medway. These 2 orders automatically converted into PSPOs in October 2017 and expired in October 2020.

This report explains what the Council needs to do in order to implement new orders. This report was considered by the Regeneration, Culture and Environment Overview and Scrutiny Committee on 14 January 2021. The comments of this Committee are set out in section 5 of the report.

1. Budget and policy framework

- 1.1. Approval of Public Spaces Protection Orders, in accordance with s59 of the Anti-Social Behaviour, Crime and Policing Act 2014, is a matter for Full Council.

2. Background

- 2.1. One of the key powers of interest to the Council, partners and the community is the Public Spaces Protection Order (PSPO). PSPOs are designed to deal with a particular nuisance or problem in an area by placing conditions on the use of the area and penalties for those that do not comply.
- 2.2. On 20 October 2014, the government implemented most of the Anti-Social Behaviour Crime and Policing Act (the Act). The purpose of the Act is to give local authorities and others more effective powers to tackle anti-social behaviour (ASB), providing better protection for victims and communities.

- 2.3. Amongst these new tools and powers are PSPOs, which are designed to control the use of public spaces. It is for each individual Council to determine what behaviour(s) they want to make the subject of a PSPO.
- 2.4. PSPOs provide Councils with a flexible power to implement local restrictions to address a range of anti-social behaviour issues in public places in order to prevent problems. An Order should help to significantly reduce incidents of relevant ASB in the area over the long-term and improve the quality of life for residents, visitors and local businesses.
- 2.5. Local Authorities can make an order as long as two conditions are met.

First condition:

Activities carried out in a public space within the local authority's area have had a detrimental effect on the quality of life of those in the locality, or it is likely that activities will be carried out in a public place within the area that will have such an effect.

Second condition:

The effect or likely effect of the activities:

- Is, or likely to be, of a persistent or continuing nature
- Is, or likely to be, such as to make activities unreasonable and justifies the restrictions imposed by the notice

- 2.6. A number of Local Authorities across England and Wales have introduced Public Spaces Protection Orders. However, one of the key challenges has come from human rights campaigners who argue that these types of controls impact disproportionately on protected rights. These include Article 8 -the right to a private and family life, Article 10 – the right to freedom of expression and Article 11 – the freedom of assembly and association.
- 2.7. Any prohibition or requirement must be reasonable in order to prevent the detrimental effect from occurring or reoccurring or must reduce the detrimental effect or reduce the risk of its occurrence, reoccurrence or continuance.
- 2.8. PSPOs can be made for a maximum of three years. The legislation provides that they can be extended at the end of the period (if the Authority is satisfied on reasonable grounds that it is necessary for various reasons), but only for a further period of up to three years. However, Orders can be extended more than once. Local authorities can increase or reduce the restricted area of an existing Order, amend or remove a prohibition or requirement, or add a new prohibition or requirement. They can also discharge an Order but further consultation must take place for varying or discharging orders.
- 2.9. Before making the Order, the local authority must notify potentially affected people of the proposed Order, inform those persons of how they can see a

copy of the proposed order, notify them of how long they have to make representation, and consider any representations made.

- 2.10. Any interested person can challenge the validity of a Public Space Protection Order in the High Court but the challenge must be made within six weeks of the making of the Order. An 'interested person' means an individual who lives in the restricted area or who regularly works or visits that area.
- 2.11. Dog fouling is not only deeply unpleasant but is also dangerous. Whilst rare, contact with dog excrement can cause toxocariasis – a nasty infection that can lead to dizziness, nausea, asthma and even blindness or seizures. According to the NHS, toxocariasis is rare in the UK, although it is hard to determine exactly how many cases occur every year, as the condition is often misdiagnosed or undiagnosed.
- 2.12. During the year 2019-2020 a total of 182 service complaints were logged concerning dog fouling. However, witnessing dog owners committing the offence of failing to pick up dog fouling is notoriously difficult to observe. Customers are offered the opportunity to make witness statements, however, they are often not willing or have only very limited information/description.
- 2.13. Respondents to the public consultation (see 6.3) showed overwhelming support for the continuation of the Public Space Protection Order to control dog fouling.
- 2.14. Respondents to the public consultation (see 6.3) concerning dogs being on leads (by direction) showed that some people felt that dogs should be allowed off leads in certain circumstances, however a majority were in favour of dogs being on leads; a majority felt that dogs should be on leads adjacent to roads, pedestrianised shopping areas and children's play areas or public paddling pools, with fewer respondents saying that dogs should be on leads in parks or greens spaces (63% were in favour). Some of the comments supporting the requirement for dogs being on leads are as follows -
 - *Again, I support this as it helps protect the animals (and reduce fighting/injuries from others), their owners, other members of the public.*
 - *As previously. Having this team around will reduce the likelihood. I only yesterday got surrounded by two dogs off leads with an owner who didn't seem to care. My two rescue dogs were petrified and jumping up to me and my little boy who was also with me was crying. Not even a word of apology from the owner. This team will make me feel safer.*
 - *As a childminder dogs often run up to my minded children and do not return to their owners when called.*
 - *Dogs off leads is a big problem that needs addressing. Most people don't take the time to train their dogs, so having untrained dogs off lead causes issues for everyone.*
 - *I find dogs to be intimidating and will avoid areas if a dog is off a lead.*
 - *Having been a dog owner and intending to be one again, I was often terrified when other large dogs approached my very small dog.*

- *I've been chased and jumped on as have the kids. It puts us off going to the park.*

2.15. Number of Fixed Penalty Notices (FPNs) issued for dog fouling by Council Officers –

- 2017 to 2018 - 1
- 2018 to 2019 - 0
- 2019 to 2020 – 0

2.16. District Enforcement were contracted take enforcement action against littering and dog-fouling offences from December 2019. District Enforcement have been able to deploy officers to known problem areas and will continue to do so. Since taking on the contract, District have issued the following FPNs –

- 2019 to 2020 – 20 for dog fouling and 2 for dogs off leads
- 2020 to 2021 – 2 for dog fouling and 2 for dogs off leads

2.17. The Animal Wardens have since July 2020 had a programme of education and advice in a number of locations, engaging with dog owners as well as community groups. They have also been stencilling messages on pavements close to schools to encourage responsible dog ownership.

3. Options

3.1. As previously noted, the powers to create PSPOs came into force in October 2014. We have consulted on these existing PSPOs which cover prohibiting dog fouling and dogs on leads (by direction); see section 6. The options are to either implement or not implement new orders.

3.2. Statutory guidance states that before extending (as well as introducing, varying or discharging a PSPO) there are requirements under the Act concerning consultation, local authorities are obliged to consult with the local Chief Officer of Police; the Police and Crime Commissioner; both have been consulted and are supportive of the renewal of the PSPOs.

3.3. Any Orders must identify and publicise (e.g. on social media and through the provision of public signage in the designated areas) the public space as a 'restricted area' and must prohibit specified activities being carried out in the restricted area (prohibitions), or require specified things to be done by persons carrying out specific activities in that area (requirements), or both.

4. Advice and analysis

4.1. The Portfolio Holders for Resources (Community Safety), Business Management (Wardens), Planning, Economic Growth and Regulation (Enforcement) are all aware of the lapsed status of these PSPOs.

- 4.2. The consultation and implementation process needed to be completed by October 2020, this was however delayed due to the initial order lapsing, although the formal consultation process has taken place.
- 4.3. A Diversity Impact Assessment (DIA) will not be required as this report does not recommend any policy/service change.

5. Regeneration, Culture and Environment Overview and Scrutiny Committee – 14 January 2021

- 5.1. The Committee considered a report outlining the background to the Medway-wide Public Space Protection Orders (PSPOs) and the status of two lapsed PSPOs concerning dog fouling and dogs on leads (by direction) that were in place across the whole of Medway and expired in October 2020.
- 5.2. The report explained the process to be followed in implementing new orders.
- 5.3. The Committee noted that the proposed introduction of the Medway-wide dog fouling and dogs on leads (by direction) Public Space Protection Orders would be considered by Cabinet on 2 February 2021 and determined by Council on 18 February 2021.

6. Risk management

- 6.1. There are reputational, environmental, economic and legal risks to the Council for not pro-actively pursuing an extension of our existing PSPOs.

Risk	Description	Action to avoid or mitigate risk	Risk rating
Not consulting on a statutory function	Legal challenge	We held a consultation for 4 weeks with 100 respondents	D4
We do not renew the dog control orders	Not having the current dog control orders. Levels of dog fouling increases, leaving the Council with reputational risk and increased pressure on service complaints and lack of income.	The dog control orders expired on 17 th October 2020 so we need to ensure we implement new PSPOs as soon as possible.	C3

7. Consultation

- 7.1. An effective consultation should provide an overview of what the local issues are, set out why a PSPO is being proposed, and what its impact would be.
- 7.2. There are no statutory requirements about the length of the consultation process. However, its duration ensured that it allowed sufficient time to meaningfully engage with all those impacted by the Order.
- 7.3. Responses received to the 4-week consultation were in support of their extension. There were 100 responses. The response rates are listed below.
 - When asked “do you support the continuation of the Public Space Protection Order to control dog fouling in Medway”, 91% were in favour.
 - When asked “do you support the continuation of the Public Space Protection Order to control dogs being off their lead by a road (highway) in Medway”, 89% were in favour.
 - When asked “do you support the continuation of the Public Space Protection Order to control dogs being off their lead in parks or green spaces”, 63% were in favour.
 - When asked “do you support the continuation of the Public Space Protection Order to control dogs being off their lead in pedestrianised shopping areas”, 88% were in favour.
 - When asked “do you support the continuation of the Public Space Protection Order to control dogs in sensitive areas such as children’s play areas or public paddling pools”, 88% were in favour.

8. Climate change implications

- 8.1. There are neither positive nor negative climate change/carbon emission implications arising from the report.

9. Financial implications

- 9.1. There are no financial implications in renewing these PSPOs.

10. Legal implications

- 10.1. The Anti-social Behaviour Crime and Policing Act 2014 and associated guidance sets out a series of requirements for introducing PSPOs and the policy for their adoption. As noted in the report, the process for implementing the new orders followed a programme of consultation.

11. Recommendations

- 11.1 The Cabinet is asked to consider the comments of the Regeneration, Culture and Environment Overview and Scrutiny Committee set out at section 5 of the report.

11.2 The Cabinet is asked to recommend to Full Council the approval of the Medway wide dog-fouling and dogs on leads (by direction) PSPOs for a period of 3 years.

12. Suggested reasons for decisions

12.1 To continue to enforce dog fouling and dogs being on leads when directed to do so.

12.2 To increase responsible dog ownership and the promotion of excellent dog care and control.

12.3 To create high levels of enjoyment for all users in our parks and open spaces environment.

12.4 To provide a safe environment for all users of our parks and open spaces including dog owners and their pets.

Lead officer contact

Neil Howlett
Community Safety and Enforcement Manager
Tel – 01634 331183
Email – neil.howlett@medway.gov.uk

Appendices

Appendix 1 – LGA Public Space Protection Orders, Guidance for Councils

Appendix 2 – Outcome of the Dog Fouling PSPO consultation

Appendix 3 – Medway boundary

Appendix 4 – Draft Dog Fouling Order

Appendix 5 – Draft Dogs on Leads Order (by direction)

Background papers

None.