

TEWKESBURY BOROUGH COUNCIL

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| Report to: | Executive Committee |
| Date of Meeting: | 14 March 2018 |
| Subject: | Public Space Protection Order – Dog Fouling |
| Report of: | Gordon Buchanan, Environmental Health Manager |
| Corporate Lead: | Peter Tonge, Head of Community Services |
| Lead Member: | Lead Member for Clean and Green Environment |
| Number of Appendices: | Three |

Executive Summary:

To replace the current enforcement activity carried out under The Dogs (Fouling of Land Act) 1996 with a Public Spaces Protection Order (PSPO) providing authorised officers with more effective enforcement methods to deal with dog fouling.

Recommendation:

- 1. That a Public Spaces Protection Order be implemented under s.59 of the Antisocial Behaviour, Crime and Policing Act 2014 as set out at Appendix A.**
- 2. That Fixed Penalty Notice fines of £100 be introduced for all controls contained in the Public Spaces Protection Order.**

Reasons for Recommendation:

The Antisocial Behaviour, Crime and Policing Act 2014 provides local authorities with powers to create Public Spaces Protection Orders where they are satisfied that activities carried out in a public place:-

- have had, or are likely to have, a detrimental effect on the quality of life of those in the locality.
- is, or is likely to be, persistent or continuing in nature.
- is, or is likely to be unreasonable.
- justify the restrictions imposed.

The Council currently controls dog fouling through provisions of The Dogs (Fouling of Land) Act 1996. That legislation has since been repealed, and the dog fouling provisions became part of the Clean Neighbourhoods and Environment Act 2005. This has also since been replaced by “Dog Control Orders” which are now made under the Anti-Social Behaviour, Crime and Policing Act 2014 forming part of a PSPO.

Introducing a PSPO has two main advantages over the current approach, namely:

- It allows for the fixed penalty fine, for failing to clean up after the dog under an individual’s control, to be increased from £50 to £100 creating a greater deterrent.
- It allows for the introduction of a second offence of failing to have readily available a suitable means of picking up any faeces deposited by a dog, under an individual’s control in any area open to the public across Tewkesbury Borough.

Resource Implications:

Officers currently have the power to issue fixed penalty notices relating to Dog Fouling, identifying the person responsible however, is often difficult. A great deal of officer resource can be taken up investigating complaints and identifying those responsible. Introducing the requirement that a person in control of a dog must have immediate access to a means of removing dog faeces from land would allow officer resource to be more efficiently directed at areas badly affected by dog fouling.

A publicity campaign informing the public about the introduction and penalties for non-compliance with the PSPO will be undertaken prior to robust enforcement activity.

In addition to all officers in the Environmental Health Team being authorised and trained to issue fixed penalties notices, other officers across the Council whose roll takes them into communities where they may witness these types of offences will also be authorised. Neighbourhood policing has advised that they wish to work closely with the Council regarding enviro-crime and antisocial behaviour. In this regard discussions will be had regarding the benefits of the PSCO's being authorised and able to issue fixed penalty notices.

Areas that are particularly badly affected by dog fouling will be patrolled this will impact on resources, however this impact will be minimised through the extensive authorisation of Council Officers as described above and joint working with the Police.

Legal Implications:

Fixed Penalty Notices will be issued offering the opportunity to discharge liability to conviction where necessary. Prosecutions under the PSPO may be carried out in situations where this is proportionate and in the public interest. All enforcement will be undertaken in line with the Environmental Health Enforcement Policy.

Risk Management Implications:

The main risk would be public acceptance of the introduction of a PSPO. In this regard a consultation exercise was carried out from August 2017 to January 2018. Those believing introduction of a PSPO would not help address the dog fouling problem were 18% compared with 57% who believed it would help and 25% who did not know.

Performance Management Follow-up:

If adopted, the fixed penalties will become part of the enviro-crime toolkit and will be included in the enviro-crime action plan, the progress of which is reported to Overview and Scrutiny Committee.

Environmental Implications:

Representing a greater deterrent with increased fixed penalties and offering a more proactive means of tackling dog fouling the introduction of this PSPO should lead to a reduction in dog fouling affected land across the Borough.

1.0 INTRODUCTION AND BACKGROUND

1.1 The issue of land affected by dog fouling is a constant source of frustration and anger to residents. It represents not only a source of odour and contamination that can get on shoes and clothes and be dragged into houses, but also a significant public health concern with the faecal matter containing a range of pathogens. Of particular note being toxocara canis which can cause blindness.

- 1.2 Identifying those that fail to pick up after the dog under their control is, by its nature, generally very difficult and resource intensive.
- 1.3 The Council currently has the power to issue £50 fixed penalty notices to those who fail to pick up after a dog under their control when it fouls on land open to the public. The particular land that is currently relevant is defined in the "Tewkesbury Borough Council, Designation of Land Order No 1 (and Revocation of Designation of Land Order No 1 1988) Order 2001, which came into force on 21 July 2003.
- 1.4 The Dogs (Fouling of Land) Act 1996 was partially repealed by the Clean Neighbourhoods and Environment Act 2005, which introduced Dog Control Orders. These allowed Councils to extend controls on dogs beyond the failure to remove dog faeces. Councils however had to adopt and introduce dog control orders. Where they did adopt the original legislation no longer applied, where they did not adopt the broader powers, as was the case with Tewkesbury Borough Council, the original legislation remained relevant and enforceable.
- 1.5 The Antisocial Behaviour, Crime and Policing Act 2014 replaced the aforementioned Dog Control Orders requiring them to be reviewed and revised and reinstated where appropriate as Public Space Protection Orders (PSPOs). Equally Councils which had not introduced Dog Control Orders could introduce Public Space Control Orders to more broadly control antisocial behaviour associated with dogs.
- 1.6 Prior to the implementation of enforcement action a publicity / education campaign will be undertaken so that the public are aware of the implications of the PSPO and the associated penalties. Following this, robust enforcement action will be undertaken along with the relevant media communications.

2.0 PROPOSED POLICY AMENDMENTS

- 2.1 The Council will introduce a Public Space Protection Order across Tewkesbury Borough with two specific provisions relating to controlling dog fouling. Those provisions being:
 - it is an offence not to remove dog faeces from land which the public have access to; and
 - it is an offence not to produce, on request, a suitable means of removing dog faeces from land.
- 2.2 The PSPO will cover any place to which the public, or any section of the public, has access for payment or otherwise, as of right or by virtue of express or implied permission (s 74(1) of the Act). This means that the controls will apply to all land in Tewkesbury Borough open to the air including agricultural land.
- 2.3 The controls will not apply to assistance dogs used by the blind or by persons who lack the physical ability to comply with the requirements of the PSPO.
- 2.4 The PSPO will expire after 3 years, at which point a full review of the controls in place will be carried out and, if necessary, amendments will be made or the Order will be extended for a further 3 years.
- 2.5 The Dogs (Fouling of Land) Act 1996 and associated By-Laws will cease to have effect.

3.0 CONSULTATION

- 3.1 A public consultation was carried for 12 weeks (as required under the legislation) from 14 August 2017 until 6 November 2017. Details of the consultation are contained in Appendices 1 and 2 attached to this report. A summary of the responses to the consultation is contained in Appendix 3.

3.2 Prior to adoption of the PSPO, it is a requirement that the Chief Officer of Police and the Police and Crime Commissioner be consulted. Subject to approval of this report, the Chief Officer and Police and Crime Commissioner will be consulted. Given the nature of the proposed Order it is not anticipated that there will be any changes to it as a result of this consultation. Should there be any significant changes then these will be brought back to Executive Committee.

4.0 RELEVANT COUNCIL POLICIES/STRATEGIES

4.1 Environmental Health Enforcement Policy.
Enviro-Crime Action Plan.

5.0 RELEVANT GOVERNMENT POLICIES

5.1 None.

6.0 RESOURCE IMPLICATIONS (HUMAN/PROPERTY)

6.1 An estimated £800 is proposed to be used in a publicity campaign.

7.0 SUSTAINABILITY IMPLICATIONS (SOCIAL/COMMUNITY SAFETY/CULTURAL/ECONOMIC/ ENVIRONMENT)

7.1 The aim of the Public Space Protection Order is to improve the environment.

Background Papers: Enviro-Crime Action Plan.

Anti-Social Behaviour, Crime and Policing Act 2014: Anti-Social Behaviour Powers - Statutory Guidance for Frontline Professionals.

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Appendices:

1. Public Space Protection Order Consultation.
2. PSPO Area Map Consultation.
3. Consultation Summary.