

Agenda Item No 10

Community and Environment Board

16 October 2023

Report of the Chief Executive

**Consultation on Public Spaces
Protection Order Dog Fouling**

1 Summary

- 1.1 This report is to bring to members attention a consultation on a Public Spaces Protection Order (PSPO) to control dog fouling issues within the borough of North Warwickshire.

Recommendation to the Board

That the Board supports a consultation on the introduction of a Public Spaces Protection Order as set out in the report and agrees to the fixed penalty notice charge reduction for early payment.

2 Background

- 2.1 A previous order was issued under The Dog Control Orders (Prescribed, Offences and Penalties, Etc.) Regulations 2006. In October 2017 Dog Control Orders automatically converted to Public Space Protection Order (PSPO), under the Anti-Social Behaviour, Crime and Policing Act 2014 however, the 'converted Order' automatically expired after 3 years meaning the Council must now consider making a new Order. A draft of the proposed Order can be found at Appendix A.

3 Public Consultation and Engagement.

- 3.1 Consultation is required to ascertain public support for the Council making a PSPO to enforce dog fouling issues within the borough.

- 3.2 The questions which is suggested should be included in the consultation can be found at Appendix B.

- 3.3 It is proposed that the consultation process is conducted in accordance with the Cabinet Office Guidelines for PSPO's. To ensure that towns and parishes can consider these proposals within their meeting cycle, the consultation period will be conducted within 6 weeks.

- 3.4 The proposals and consultation will also be circulated to a wide variety of interested parties, including residents via a variety of communication channels, including NWBC Website, Social Media, GovDelivery, Parish and Town councils via elected members, community safety partners and health and wellbeing partners. The results of the consultation will be used as the basis for a further report to the committee on the proposed implementation of the PSPO.

4 **Report Implications**

4.1 **Financial Implications**

4.1.1 This report does not identify any financial implications.

4.2 **Safer Communities Implications**

4.2.1 These are set out in the report.

4.3 **Legal and Human Rights Implications**

4.3.1 The Anti-Social Behaviour, Crime and Policing Act 2014 (the 2014 Act) allows a PSPO to be made if;

- (a) activities being carried on in a public place in the Council's area have had a detrimental effect on the quality of life of those in the locality or it is likely that such activities will be carried on and have that effect; and,
- (b) the activities are persistent or continuing in nature, unreasonable and justify the restrictions imposed by the PSPO.

4.3.2 A PSPO must identify the areas to which it applies and may:

- (a) prohibit specified things from being done;
- (b) requires specified things to be done by those carrying on certain activities; or,
- (c) both those things.

4.3.3 The prohibitions or requirements in a PSPO may only be those which are reasonable to prevent or reduce the detrimental effect or the activities concerned or the risk of its continuance. Accordingly, Members should consider whether each of the proposed prohibitions have that effect.

4.3.4 The 2014 Act requires a local authority to take certain steps before making a PSPO including consultation. Those who must be consulted include:

- (a) the chief officer of police and the local policing body for the police area that includes the restricted land, i.e., the Chief Constable for Warwickshire and the Police and Crime Commissioner;
- (b) the community representatives which the Council considers appropriate, for example, users of the land to which the restrictions will apply; and,
- (c) the owner or occupier of any land within the restricted area.

Accordingly, the Council must expressly contact those people / bodies as part of the consultation process. It is also recommended that those referred to at (c) are asked to identify the land they own or occupy within the borough so that the Council is clear which areas of land any PSPO would apply to. In turn this will allow the Council to consider whether any specific piece of land should or should not be included and, once any PSPO is made, assist with enforcement.

4.3.5 If any of the land concerned is registered common land, a registered town or village green or open access land the Council may need to take additional steps to consult

representative organisations. It is recommended that the Council identifies any such land which is likely to be affected prior to any consultation exercise.

- 4.3.6 The Council must also consider any likely impact on the rights protected by the Human Rights Act 1998, particularly those relating to freedom of expression and assembly. There is little likelihood of the proposed PSPO impacting on those rights.
- 4.3.7 It is an offence to breach a PSPO once made however, the 2014 Act gives the Council power to issue a fixed penalty notice, which if paid prevents the Council from prosecuting the person concerned for that offence.
- 4.3.8 The Council must also consider Guidance issued by the Secretary of State when making a PSPO, the most recent version having been issued in March 2023. This states that any consultation should be reasonable and proportionate to the issues concerned.

4.4 **Risk Management Implications**

- 4.4.1 None relating to this report.

4.5 **Equality Implications**

- 4.5.1 The Council will need to consider whether there is potential for a PSPO relating to dog fouling to impact negatively on those who rely on an assistance dog in relation to a disability which is a protected characteristic under the Equality Act 2010. In that respect, Members should consider whether the savings in paragraph 7 of the proposed PSPO sufficiently mitigate any potential negative impact. It is further suggested that any consultation expressly invites the views of any body or persons which represent those having such disabilities within the Council's area or more broadly support those persons.

4.6 **Environmental, sustainability and Health Implications**

- 4.6.1 Failure to remove dog faeces from land can lead to several negative effects, increasing nitrogen and phosphorus levels, which may alter plant diversity and has the potential to reduce biodiversity, dogs may also deposit roundworm(*toxocara canis*) eggs onto the land which can lead to infection of people, and in rare cases lead to blindness.

The Contact Officer for this report is Sharon Gallagher (719292).



North Warwickshire
Borough Council

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014
SECTION 59
PUBLIC SPACES PROTECTION ORDER
NORTH WARWICKSHIRE BOROUGH COUNCIL ORDER 2022

North Warwickshire Borough Council (“the Council”) being satisfied that the conditions set out in Section 59(2) and 59(3) of the Anti-Social Behaviour, Crime and Policing Act 2014 (“the Act”) have been met in relation to this order, namely that failure to remove dog fouling and incorrect disposal of dog foul bagged or otherwise, is an issue in North Warwickshire, frequently reported and seen across the borough. Accordingly, this behaviour has had a detrimental effect on the quality of life of those in the locality, or it is likely that the behaviour will be carried out in the area and have such an effect. The Council is also satisfied that the effect, or likely effect, of the behaviour is, or likely to be, of a persistent or continuing nature, and these activities are unreasonable and justify the restrictions imposed by the notice, and that it is in all circumstances expedient to make this order for the purpose of reducing crime and/or anti-social behaviour in a public place.

The council in exercise of its powers under Sections 59,60,61 and 72 of the Act and under all other enabling powers, hereby makes the following Order:

General provisions:

1. This Order applies to all land in the administrative area of the Council to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission namely
 - a) All roads and pavements throughout the Borough
 - b) All Council owned land including parks, gardens, recreation and sports grounds, cemeteries, open spaces, enclosed children’s play areas, car parks and parking places
 - c) All land belonging to Warwickshire County Council and Town and Parish Councils to which the public have access
 - d) All footpaths and other rights of way that cross land owned by the County, Borough, Town and Parish Councils.
2. A person who fails to comply with any obligation imposed by this Order is guilty of a criminal offence by virtue of section 67(1) of the Anti-social Behaviour Crime and Policing Act 2014 and liable to a fine on summary conviction not exceeding level 3 on the standard scale (currently £1000).

Obligations on persons with dogs:

3. Fouling

If a dog defecates at any time on land to which this Order applies a person who is in charge of the dog at the time must remove the faeces from the land forthwith unless

- (a) He has reasonable excuse for failing to do so; or
- (b) The owner, occupier or other person or authorities having control of the land has consented (general or specifically) to his failing to do so.

4. Means to pick up

A person in charge of a dog on land to which this order applies must have with him an appropriate means to pick up dog faeces deposited by that dog unless

- (a) he has reasonable excuse for failing to do so: or
- (b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so.

The obligation is complied with if, after a request from an authorised officer, the person in charge of the dog produces an appropriate means to pick up dog faeces.

5. Fixed Penalty Notice

An authorised person may issue a fixed penalty notice to anyone he or she believes has committed an offence. You will have 14 days to pay the fixed penalty of £100 discounted to £75 if paid within 10 days.

6. Appeals

Any challenge to this order must be made in the High Court by an interested person within six weeks of it being made. An interested person is someone who lives in, regularly works in, or visits the restricted area. This means that only those who are directly affected by the restrictions have the power to challenge. The right to challenge also exists where an order is varied by the Council.

Interested persons can challenge the validity of this order on two grounds: that the Council did not have power to make the order, or to include particular prohibitions or requirements; or that one of the requirements of the legislation, for instance consultation, has not been complied with.

When an application is made the High Court can decide to suspend the operation of the Order or any prohibition or requirement in it pending the Court's decision.

7. Exemptions

Nothing in this Order shall apply to a person who –

- (a) Is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948; or
- (b) A person with a disability affecting their mobility, manual dexterity or ability to lift, carry or move everyday objects and who relies upon a dog trained by a prescribed charity for assistance.

For the purpose of this Order:

- A person who has a dog in his possession shall be taken to be in charge of the dog at any time unless at that time some other person is in charge of the dog.
- Placing the faeces in a receptacle on the land, which is provided for the purpose, or for the disposal of waste, shall be sufficient removal from the land.
- Being unaware of defecation (whether by reason of not being in the vicinity of otherwise), or not having a device for or other suitable means of removing the faeces shall not be a reasonable excuse for failing to remove the faeces.
- “an authorised officer of the Council” means an employee, partnership agency or contractor of the Council who is authorised in writing by the Council for the purposes of giving directions under the Order.

This Order shall come into operation on (date to be agreed) and shall have effect for a period of 3 years thereafter, unless extended by further orders under the council's statutory powers.

**The Common Seal of North Warwickshire)
Borough Council was hereunto affixed)
The day of 2023 in the)
presence of:-)**

Appendix B

| Question | Yes | No | comments |
|---|--------------------|----|----------|
| Please select which area you live in | (drop down) | | |
| Do you support North Warwickshire Borough Council (NWBC) insisting that dog owners/persons in charge of a dog, pick up dog faeces (poo) on any land which is open to the air to which the public have access? | | | |
| Do you support NWBC's proposal that a person who is in control or possession of a dog when an offence is committed, (fouling or picking up after their dog) being the person who is liable regardless of animal ownership | | | |
| Do you support NWBC issuing Fixed Penalty Notices of £100 for failure to pick up dog faeces (poo) on land detailed in section 1 of the order. | | | |
| Do you have any suggestions/recommendations as to how we can reduce the impact of such behaviour? | | | |