



**Regulatory Committee**

**Thursday 12<sup>th</sup> March 2020**

**Subject: Consultation on Extension of District Wide Dog Fouling Public Space Protection Order**

Report by:

Chief Executive

Contact Officer:

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Purpose / Summary:

To seek consent to consult upon the extension of the district wide Public Space Protection Order relating to dog fouling.

**RECOMMENDATION(S):**

Elected Members are asked to:

- 1. Agree to consult upon the proposals to extend and vary the existing Dog Fouling Public Space Protection Order (PSPO)**
- 2. Approve the suggested consultation plan and timeline.**

## IMPLICATIONS

### **Legal:**

PSPOs are made under section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014. A minimum 30 day consultation period is required by Legislation. The Council intends to consult for its minimum 6 week period.

The Council can vary, extend or discharge a PSPO in line with section 72 of the Anti-Social Behaviour, Crime and Policing Act 2014.

Breach of a PSPO may be dealt with by a fixed penalty notice or prosecution. Delegated powers are in place for service of fixed penalty notices.

Appeals against the making of a PSPO can be made in the High Court within 5 weeks of the PSPO being made, on the grounds that the process has not been followed, or that the council did not have the authority to make the Order or put certain restrictions in the Order.

### **Financial : FIN/180/20/SSc**

There is a cost associated with the consultation exercise and any publicity that is required. These will be met from existing service budgets.

Fixed penalty notices (FPN's) for breach of a PSPO are set at £100 with a £75 early payment incentive within fees and charges. Income from fixed penalty notices may be used to support the service issuing the FPN.

### **Staffing :**

Staff time will be required to support the consultation process, however most of the responses are provided online.

The Council already has provision in place to monitor and enforce the PSPOs in place and it is not proposed that any subsequent approval will affect this as it is an extension of an existing order.

### **Equality and Diversity including Human Rights :**

The proposed extension of this PSPO will not disadvantage any social groups over another, and the process will be applied fairly. The Councils approach to fixed penalties is outlined in its Corporate Enforcement Policy.

### **Data Protection Implications :**

There are no data protection implications.

### **Climate Related Risks and Opportunities :**

### **Section 17 Crime and Disorder Considerations :**

**Health Implications:**

Dog fouling has a detrimental impact on health, with the main concern being Toxocariasis  
<https://www.nhs.uk/conditions/toxocariasis/prevention/>

**Title and Location of any Background Papers used in the preparation of this report:**

Guidance on preparation of PSPOs : <https://www.local.gov.uk/public-spaces-protection-orders-guidance-councils>

**Risk Assessment :**

Challenge in the High Court – the risk of this is reduced by following process and considering reasonableness throughout process

Orders relating to dogs can be controversial and may lead to negative publicity. To be mitigated at consultation stage with careful publicity, reasoned grounds for suggested Orders and multiple options for responding provided.

**Call in and Urgency:**

**Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?**

*i.e. is the report exempt from being called in due to urgency (in consultation with C&I chairman)*

**Yes**

**No**

**Key Decision:**

*A matter which affects two or more wards, or has significant financial implications*

**Yes**

**No**

## **1 Introduction**

- 1.1 In June 2017 the Council designated its “Dog Fouling Public Space Protection Order”, which is in place until the 5<sup>th</sup> of June 2020. This PSPO focussed on dog fouling and disposal and applied across the whole district.
- 1.2 The impact of dog fouling on both the natural environment and on public health is well known. It is essential for the Council to promote responsible dog ownership and to ensure that where this is not the case there is provision, in law, for addressing it.
- 1.3 This report proposes that the existing PSPO is extended for an additional three years and varied to include a requirement for dog owners to carry dog bags with them at all times.

## **2 Legal Position**

- 2.1 PSPOs are made under section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014. Orders can be extended and varied under sections 60 and 61 of the Act.
- 2.2 These Orders can be made on any land open to the air that the public has a right or entitlement of access to
- 2.3 To make an Order, the local authority needs to be satisfied on reasonable grounds that the activities carried out, or likely to be carried out, in a public space:
  - 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
  - Justifies the restrictions imposed

## **3 Proposed Extension**

- 3.1 The current PSPO has been in place since 2017 and during this time the Council have received 27 reports of dog fouling from a variety of geographical areas. 2 fixed penalty notices have been issued during this period.
- 3.2 Targeted patrols have been undertaken in 10 of the locations, with advice and guidance being provided to dog owners during these patrols. Anecdotally, the visibility of these patrols does seem to reduce the level of reporting.
- 3.3 Alongside this there have been 161 reports of dog fouling made to street cleansing. These are referred on as there is no evidence available to enable the issuing of an FPN and this figure alone demonstrates that this is still a problematic issue within the district.

- 3.4 It is believed that dog fouling is under reported generally as it is not seen as something that the Council will address. In certain circumstances it is also something that if observed in a more rural or natural setting is less likely to be reported or seen (i.e. on grass verges).
- 3.5 Based on the above it is proposed that the PSPO be extended for an additional three years. The Authority is not required to consult on this matter, however it is deemed that consultation on the extension and variation together would be helpful in regards to establishing the level of support in relation to this.
- 3.6 The PSPO will apply to all land within the boundary of West Lindsey District Council, with the exception of exempt areas.

#### **4 Variation of the PSPO**

- 4.1 The PSPO in its current form has restrictions for :
- Dog fouling occurring on any land which is open to the air, and to which the public have a right or entitlement of access to, whether paid or unpaid, within the District of West Lindsey, must be removed immediately by the person at that time in control of the dog.
  - Dog fouling must be properly disposed of in a general waste bin or dog waste bin
- 4.2 The second restriction enables the Council to ensure that persons are disposing of the dog waste appropriately, should their dog foul. However it does not enable the officer to establish whether the person is able to do this should they be required to.
- 4.3 Therefore it is proposed to vary the PSPO to include a requirement to produce a device or other suitable means of removing dog faeces and transporting it to a bin (whether or not the dog has defecated).
- 4.4 In order to introduce this variation, under the Act the Council must be satisfied that the conditions within it are met.

The first condition is that:

- (a) Activities carried on in a public place within the Council'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.

The second condition is that the effect, or likely effect, of the activities:

- (a) Is or is likely to be, of such 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

- 4.5 Given the level of reports the Council receive after the event of fouling occurring it is deemed that this additional restriction is needed in order to further address irresponsible dog ownership
- 4.6 The intention of this variation is to enable officers to address responsible dog ownership, regardless of whether dog fouling has occurred or not and will enable officers to request evidence of this when carrying out their targeted patrols.

## **5 Consultation**

- 5.1 The legislation requires that a minimum 30 days consultation is carried out. It is proposed, in line with the Council's standard to consult on this matter for 6 weeks, a period greater than the requirement.
- 5.2 Should approval be given to consult, the following timeline will apply:
  - 12<sup>th</sup> March – agreement to be sought from Regulatory Committee
  - 16<sup>th</sup> March – Commence consultation
  - 27<sup>th</sup> April – Consultation closes
  - 11<sup>th</sup> May – Final proposal to Management Team
  - 4<sup>th</sup> June – Final proposal to Regulatory Committee
  - June (tba) – PSPO to come into effect (if approved)
- 5.3 Public notices will be produced for both the extension and the variation of the order. These will be displayed in the Council Offices and made available on request. The public notice will also be advertised in the local press, who will also receive a press release.
- 5.4 A draft of the proposed order and a list of frequently asked questions will be made available online during the consultation period. The FAQs are shown in appendix 2.
- 5.5 There are a wide range of statutory consultees, including Parish Councils that will be advised of the consultation. Alongside this, information will be sent to organisations that have a specific interest in dogs to ensure that their views are represented.
- 5.6 The consultation forms themselves will be online and paper copies will be made available as required.